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IN THE SUPREME COURT OF THE STATE OF IDAHO

THE STATE OF IDAHO,)	Supreme Court No. _____
)	
Plaintiff-Respondent,)	
)	
vs)	COURT REPORTER'S TRANSCRIPT
)	
THOMAS EUGENE CREECH,)	
)	
Defendant-Appellant.)	
_____)	

BEFORE
HONORABLE J. RAY DURTSCHI
DISTRICT JUDGE

APPEAL from the District Court of the First
Judicial District of the State of Idaho, in and for the
County of Shoshone.

A P P E A R A N C E S

WAYNE KIDWELL, Esq. Attorney General of the State of Idaho, Capitol Building, Boise, Idaho, for and on behalf of the plaintiff-respondent.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa, Idaho, appearing for and on behalf of the defendant-appellant.

1 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
2 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE
3
4

5 THE STATE OF IDAHO,)

Cr. No. 2165

6)
7 Plaintiff,)

8 VS)

REPORTER'S TRANSCRIPT

9 THOMAS EUGENE CREECH,)

10 Defendant.)
11
12

13 BEFORE

14 HONORABLE J. RAY DURTSCHI

15 DISTRICT JUDGE
16
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18 BE IT REMEMBERED, That the above-entitled matter came
19 on for hearing and trial before the Honorable J. Ray Durtschi,
20 District Judge, with a jury, at Cascade, Idaho, May 20, 1975
21 through May 22, 1975, and at Wallace, Idaho, October 6, 1975
22 through October 22, 1975.
23
24
25

A P P E A R A N C E S

ROBERT REMAKLUS, Esq., Prosecuting Attorney, Cascade, Idaho, and
LYNN THOMAS, Esq., Deputy Attorney General, Statehouse, Boise,
Idaho, appearing for and on behalf of the plaintiff.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa, Idaho,
appearing for and on behalf of the defendant, and

WARD HOWER, Esq., Post Office Box 799, Cascade, Idaho,
appearing for and on behalf of the defendant.

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

THE STATE OF IDAHO,

Plaintiff-Respondent,

vs

THOMAS EUGENE CREECH,

Defendant-Appellant.

) Cr. No. 2165
)
)
) LODGMENT OF COURT
) REPORTER'S TRANSCRIPT
) ON APPEAL
)
)
)

RECEIVED from John W. Gambee, Official Court Reporter
of the above-entitled court, and lodged with me this ____ day
of _____, 1976, original plus _____ copies of
the Court Reporter's Transcript on Appeal.

CLERK OF THE DISTRICT COURT

Deputy

1 CASCADE, IDAHO, FRIDAY, MAY 30, 1975, 2:00 P.M.

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4 THE COURT: For the record, I'd state this case is
5 State versus Creech. This was the earliest date I had available
6 for further hearing on the Motion for Change of Venue since the
7 trial was concluded with ruling that the venue should be changed,
8 by leaving it open as to where the change should be.

9 Counsel agreeable to hearing the matter -- further
10 hearing on that matter at this time without formal notice?

11 MR. HOWER: Yes.

12 MR. REMAKLUS: The State is agreeable, Your Honor.

13 THE COURT: All right, I'll hear anything Counsel have to
14 present pursuant to any further answer for Motion of Change of
15 Venue. Mr. Hower first.

16 MR. HOWER: I have nothing further to present at this
17 time, Your Honor.

18 THE COURT: Do you have any requests as to particular
19 venue that you desire to have it changed to?

20 MR. HOWER: No, I haven't. As I said in my statement,
21 Your Honor, I'm not in a position to judge the degree to which
22 other venues might be subject to the same objection that this
23 one is.

24 I'm reluctant to recommend a venue for fear that,
25 at least psychologically, I would jeopardize any future need I

1 might feel to attack it and --

2 THE COURT: I think that's your privilege. I don't think
3 there's any requirement.

4 MR. HOWER: I tend to be passive at this stage as far as
5 the choice of venue is concerned.

6 THE COURT: Mr. Remaklus, I'll hear anything you have to
7 present.

8 MR. REMAKLUS: Your Honor, my only comment is that so
9 long as the new venue would have adequate facilities to
10 accommodate all of us, a large number of jurors and proper -- I
11 think the proper security facilities, why, I'm certainly
12 willing to abide by any decision the Court makes.

13 THE COURT: Mr. Creech, anything you'd like to present
14 on this matter on your own behalf?

15 MR. CREECH: No, sir.

16 THE COURT: Well, I think the ultimate decision has to
17 be the Court's and it's within the Court's discretion so I'll
18 take the matter under advisement and make my own inquiries to
19 determine where I feel an appropriate venue would be and make
20 that determination and so advise Counsel.

21 Anything further to come before the Court?

22 MR. HOWER: Yes, the defendant, Your Honor, has asked me
23 to present to the Court his request that he be held in custody
24 pending further action, either in Valley County or in Ada
25 County, but not in Grangeville. I might mention to the Court

1 that Grangeville is less accessible to me than Ada County is.

2 While the defendant has been in Ada County, when
3 I've had -- when I felt it necessary to see him I've always
4 been able to come down to visit Mr. Creech with other business
5 and, as a result, I haven't charged the County for my time in
6 traveling to and from.

7 While he's in Grangeville, I'll be obliged to charge
8 the County for that. I realize that on the scale of these
9 events, that's a fairly minor matter, but I'm transmitting, at
10 the defendant's request, his preference for custody in Valley
11 County or in Ada County.

12 THE COURT: Wish to respond to that, Mr. Remaklus?

13 MR. REMAKLUS: No, I have no particular response to make;
14 other than our facilities here are inadequate and, of course,
15 our purpose in petitioning the Court for an order to hold the
16 defendant in Grangeville was solely and only for the purpose of
17 getting a way of diminishing the publicity in this matter and
18 we certainly have confidence in the facilities and, then, the
19 law enforcement personnel in Ada County, but it seems to me
20 that we would be falling back into the same trap and that we
21 were in before.

22 THE COURT: Well --

23 MR. REMAKLUS: Your Honor?

24 THE COURT: Yes.

25 MR. REMAKLUS: I'm just advised by the Sheriff that

1 Idaho County has a shortage of personnel and don't feel that
2 they are adequately staffed to handle this matter, therefore,
3 I would withdraw any objection to having the defendant confined
4 in the Ada County Jail.

5 THE COURT: Well, Mr. Creech, Mr. Hower may want to
6 further respond to this when I advise you that, of course, once
7 the formal order for change of venue is entered the problem
8 is going to be increased rather than lessened because the
9 Statute only change of venue requires that if the defendant is
10 in custody, the order must direct his removal and forthwith
11 removed by the Sheriff of the county where he is to the custody
12 of the Sheriff in the county to which the action has been moved.

13 Now, it seems to me under any circumstances the
14 change of venue necessary is going to get in the circulation
15 of the news media that created the problem, here required it
16 to necessitate the first change of venue, is going to be some
17 distance removed from Valley County, no matter where it is. And
18 once that order is entered the mandate of the Statute requires
19 that the defendant be transported to that county and, then,
20 of course it would be up to the Court and the Sheriff in that
21 county you were to be removed to some other county where that
22 would be because once that order is entered that court has the
23 jurisdiction as if the case were filed there initially.

24 I take it that would apply to the custody of the
25 -- all those other problems. The only reason I'm pointing

1 that out is to say this problem you've presented by your
2 motion here is just a temporary one and anything I would be
3 granting of it would be only a short-lived solution. It
4 wouldn't help in any --

5 MR. HOWER: Your Honor, in that connection I would
6 think that once the decision is made and the order entered
7 on the transfer of venue; that the Court to which venue is
8 transferred would have the same power that this Court now has,
9 to order that the defendant be held in custody in a county
10 other than the one where he's going to stand trial. It's the
11 problem of this Court for him to be held in Ada County when
12 venue was here. I should think it would be proper for the
13 Court where venue is transferred to order him held anyplace it
14 wants to in the state.

15 THE COURT: That will certainly be true, but it would
16 be up to that Court to do it. I wouldn't be able to bind that
17 Court's hands.

18 MR. HOWER: I understand that.

19 THE COURT: Any order I enter today will only be effective
20 until the formal order has been signed changing the venue and
21 it will be annulled after that.

22 I'm not intending to suggest that you couldn't
23 appropriately ask the Court in that county to which venue is
24 moved, have the defendant lodged anywhere you want, either
25 site if you want, that would have to be presented to that

1 Court -- Judge of that court at that time.

2 Well, apparently you concur, Mr. Remaklus, in the
3 request of the defendant to be transferred from Grangeville,
4 the Idaho County Jail. Now, the defendant has left it open
5 as to which jail, either Valley County or Ada County. Do you
6 have a preference?

7 Does the Sheriff have a preference?

8 MR. REMAKLUS: Excuse me just a moment, Your Honor.

9 (Brief delay.)

10 MR. REMAKLUS: The Sheriff advised that he would
11 prefer that the defendant be transferred to the Ada County
12 Jail. We don't have the staff here to provide the proper
13 security measures, Your Honor.

14 THE COURT: Well, I would entertain an order to that
15 effect, then, if you want to have one prepared.

16 MR. REMAKLUS: Thank you.

17 MR. HOWER: May I make a request in that direction,
18 Your Honor?

19 The other morning when the Court ruled in favor
20 of the Motion for Change of Venue in open court, the prisoner
21 was ordered remanded to the custody of the Valley County
22 Sheriff. Approximately an hour later the prisoner was
23 transferred to the custody of the Idaho County Sheriff and
24 this was done without notice. But, more important, I think,
25 without even information to me. I don't know that I have any

1 standing to demand formal notice when a prisoner is moved so
2 long as this is not done with a purpose of rendering him
3 inaccessible to me but I do think the courtesy of a phone call
4 is in order if a further change of the prisoner's location in
5 immediate contemplation and I would ask Counsel and the Court
6 to take formal notice of my request that if, within an hour or
7 two, the prisoner is to be transferred to some place other
8 than Ada County, that I have the courtesy of a phone call so
9 that I don't learn it a day or two later when the press calls
10 me and asks for a comment.

11 THE COURT: Wish to respond, Mr. Remaklus?

12 MR. REMAKLUS: No, thank you, Your Honor.

13 THE COURT: Well, I note your concern, Mr. Hower, but
14 I'm going to complete the record because there's a part of the
15 record that -- a matter that isn't in the record. Under your
16 statement, perhaps you are not aware of, although you might be
17 -- have been made aware of it by a member of your family, but
18 the Court made great efforts to call you upon my return to
19 Cascade and this can be confirmed with the Clerk that I had
20 her make a personal call to your home trying to reach you. I
21 personally called your office three times and got no response.
22 Someone told the Clerk at your home that you had gone to see
23 your mother, I think it was, in Emmett.

24 MR. HOWER: That's correct.

25 THE COURT: And that they didn't know when you'd be --

1 return.

2 Now, this was a matter I wanted to conclude before
3 I left Cascade so I wouldn't have to make another trip back
4 and I felt that was sufficient effort to contact you because
5 I think, under the record, it probably is true that you don't
6 have to be formally notified of this but I want the record to
7 reflect that that effort was made to reach you.

8 MR. HOWER: I appreciate the effort, Your Honor, I
9 didn't receive notice of any effort to reach me.

10 THE COURT: Well, I didn't personally call your home,
11 the Clerk did, but I think she can advise you to whom she
12 talked. She mentioned, I was in her presence when she called,
13 and she referred to whoever she talked to as "your father".
14 Now, I don't know whether you have a son or daughter at home,
15 I gathered from the context of her remarks that she was
16 talking to one of your children.

17 MR. HOWER: Well, I don't wish to belabor this, but I
18 should think it would be routine procedure for Counsel of
19 record to receive a copy of the order in a case, I presume
20 that a formal order was signed.

21 THE COURT: Signed before I left Cascade that day.

22 MR. HOWER: I learned from the Sheriff that an
23 affidavit was presented to him and that he signed it. I went
24 to the Sheriff's office when I learned of the transfer and
25 asked to see the order and he didn't have a copy and no copies

1 of the order have been mailed, or served, upon me when I should
2 think that order tendered in this cause would routinely be
3 mailed, or served to Counsel of record.

4 If I'm away from my home that would ensure that I
5 knew what happened thereafter.

6 THE COURT: Well, if you want to remain available until
7 that order is signed, why, I'll hand one personally to you
8 today, Mr. Hower, when it's signed. But, I don't intend to
9 wait around once I did sign it to find you, and, if you are not
10 available you can check with the court record to find it.

11 Anything else to come before the Court?

12 MR. REMAKLUS: I only have one other matter, Your Honor.

13 When we were last in court I moved the court for
14 an order permitting Lynn Thomas, Deputy Attorney General, to
15 actively participate and associate with me in the trial of
16 this matter and I would like to have that matter cleared up
17 if we may.

18 THE COURT: Well, I've done some more research on that
19 and I have filed the order and I feel that the Attorney
20 General, under his powers, has authority to appear at any
21 criminal action that the Prosecuting Attorney, without
22 consent of the Court, so that order has been filed.

23 MR. REMAKLUS: Thank you, Your Honor.

24 THE COURT: Well, I have a matter on my own motion that
25 I'm going to take care of at this time in open court.

1 Mr. Bailiff, if you will come before me, please.
2 I want a copy of this order to be served upon the Defendant,
3 upon Defense Counsel and upon the Prosecutor. I want the
4 record to show these were served in open court.

5 I'll give you one to serve on Mr. Thomas also.

6 I'll advise Counsel that I've also served the --
7 I've already personally served the Sheriff of Ada County with
8 a copy of this and I intend, Mr. Lynskey, if you would accept
9 service in open court for your office and --

10 MR. REMAKLUS: Your Honor, for the record I would like
11 to acknowledge service of the Order -- of a copy of the Order
12 of the Court, re publicity dated May 27, 1975.

13 THE COURT: I'll also advise Counsel that I intend to
14 see to every law enforcement office that has any contact
15 with the defendant that's served with a copy of this, past
16 or future.

17 All right, for the time being the defendant will
18 be remanded into the custody of the Sheriff of Valley County
19 subject to any order that might be entered in that regard.

20 Court is in recess.

21 (Whereupon the proceedings were concluded.)
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1 BOISE, IDAHO, MONDAY, JUNE 9, 1975, 3:30 P.M.

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4 THE COURT: State versus Creech.

5 My information as to how this got on the calendar
6 was through the Clerk's office. Apparently there was a request
7 by telephone from the Clerk's office to have this put on the
8 calendar today subject to my approval. I told the Clerk it was
9 fine with me and I understand this is by stipulation of Counsel,
10 is that right?

11 MR. ROBINSON: As far as I'm concerned.

12 MR. THOMAS: Yes, Your Honor.

13 MR. HOWER: Yes, Your Honor.

14 THE COURT: Show the hearing came on today by stipulation
15 of Counsel.

16 All right, I'll hear anything Counsel have to
17 present. State have anything to present on the matter?

18 MR. THOMAS: No, Your Honor, the State has nothing.

19 THE COURT: Mr. Hower?

20 MR. HOWER: May it please the Court, Mr. Bruce Robinson
21 of the Canyon County Bar is prepared to enter an appearance as
22 attorney for the defendant and when he has done so I will move
23 the Court to relieve me of responsibility as Public Defender for
24 the defense.

25 THE COURT: Did you wish to be entered as Counsel of

1 record, Mr. Robinson?

2 MR. ROBINSON: Yes, Your Honor, and I would like to have
3 the defendant state on the record whether or not this is his
4 desire, to retain his own counsel and dismiss the heretofore
5 Court-appointed counsel and Public Defender.

6 THE COURT: I'll hear anything you have to say,
7 Mr. Creech, on that matter.

8 MR. CREECH: That's fine with me. That's what I want, a
9 change of counsel.

10 THE COURT: You do? Mr. Robinson is your own attorney;
11 you've retained him yourself, then?

12 MR. CREECH: Yes, sir.

13 THE COURT: And privately retained and you want him to be
14 made counsel of record?

15 MR. CREECH: Yes, sir.

16 THE COURT: You no longer desire to have Mr. Hower
17 represent you, then?

18 MR. CREECH: No, sir.

19 THE COURT: All right. The record may show, then, that
20 Mr. Bruce Robinson is entered of counsel, to be retained by
21 the defendant himself and not court appointed and that
22 Mr. Hower may be withdrawn as counsel.

23 MR. HOWER: I thank the Court.

24 THE COURT: All right. I'll advise you, Mr. Robinson,
25 since you are now counsel of record, that I have pending before

1 me, as you are probably aware, a motion for -- a Motion for
2 Change of Venue which has been granted as far as determining
3 there should be a change, but the matter of where the new venue
4 should be is still being under advisement and being open for
5 decision.

6 The record will show at this time that a hearing was
7 had on this matter on May the 30th to give then counsel a chance
8 to make any presentation they wanted as far as the location of
9 a new venue. Both counsel at that time, in open court, declined
10 to make any showing or presentation in that regard.

11 I'm going to give you the same opportunity at this
12 time, or, if you need time to consider the matter, I would give
13 you additional time, Mr. Robinson.

14 MR. ROBINSON: I do need additional time, Judge Durtschi,
15 to apprise myself completely of a recommendation made on behalf
16 of Mr. Creech. I wish the record to indicate that at this point
17 in my appraisal, that Wallace, Idaho, in our estimation, would
18 be a proper place for the change of the venue.

19 Having considered all other areas of the State of
20 Idaho and the past condition of the media involvement in this
21 case, I wish to inquire of the Court as to possible time
22 involvement between now and the resetting; basically for this
23 reason: The Attorney General's Office and Mr. Remaklus are
24 convenient and handy to this location in Ada County as is
25 Sheriff Palmer and as many -- and I'm sure the Court is aware

1 that new counsel must apprise himself of some past
2 circumstances over the last six or seven months and needs to,
3 on an accelerated basis, get involved into the case so that
4 Mr. Creech does have total representation when the matter is set
5 for trial.

6 To accomplish this, I would desire very much that
7 Mr. Creech is incarcerated close by and that would be here in
8 Ada County. My imagination has run across this matter, that
9 when the Court makes its order, or change of venue, that it
10 might be that the Court, when making that order, would have to
11 also transfer Mr. Creech to the location of that change of
12 venue and interrupt that accessibility of Mr. Creech just
13 merely by distance and being available to completely apprise
14 myself of the past events. So, basically, that is what I have
15 in mind in making any presentation to the Court on a recommendation
16 for change of venue and if that could be delayed, I would so
17 request the Court to delay making that decision.

18 I don't believe that there's anything that we have
19 failed to take into consideration about our request regarding
20 Wallace, Idaho.

21 THE COURT: Well, I'd like to understand just exactly
22 what your position is, Mr. Robinson. You are saying you don't
23 need any further time to consider other locations, that that's,
24 as far as you are concerned, a final recommendation; or did you
25 need additional time to consider that matter with, maybe, other

1 areas being considered?

2 MR. ROBINSON: I would think at this point, having given
3 the Court my present thinking, I would think that we would
4 desire more time to solidify this decision.

5 THE COURT: Perhaps make additional recommendations --

6 MR. ROBINSON: Yes, Your Honor.

7 THE COURT: -- as to place of change of venue?

8 MR. ROBINSON: Yes, Your Honor.

9 THE COURT: State have anything to present on that
10 matter?

11 MR. THOMAS: No, Your Honor, nothing except to say that
12 if additional recommendations are made the State would naturally
13 have an opportunity to respond.

14 THE COURT: Well, yes, anything else that would be
15 taken up will be taken up in open court.

16 How much time did you want, then, Mr. Robinson?

17 MR. ROBINSON: I would imagine a week's time or, perhaps,
18 ten days, possibly the middle of next week.

19 THE COURT: June 18th?

20 MR. ROBINSON: I'm involved in a preliminary hearing on
21 the 18th, Your Honor, and --

22 THE COURT: I'm going to be in Elmore County on the 19th
23 and 20th, so we either have to do it before the 18th or the
24 following week.

25 MR. ROBINSON: I guess we'd better go to the following

1 week, Your Honor, the 16th, 17th and 18th I'm out in three
2 different courts.

3 THE COURT: All right, June 24th, then?

4 MR. ROBINSON: Begging the Court's pardon, I've got to
5 leave for Vancouver, B.C. Sunday the 22nd and will be gone for
6 the -- until the 30th to the Alaska-Idaho Bar. Perhaps we could
7 appear before the Court on the 30th?

8 THE COURT: Well, I want the record to show I could hear
9 it any time other than the 19th, 20th. If you request the 30th,
10 that's fine with me, but I want the record to show that's not
11 because I don't have other available dates. The only dates I'm
12 going to be unavailable is the 19th and 20th.

13 MR. ROBINSON: Then I specifically request the 30th,
14 Your Honor.

15 THE COURT: Is that all right with you, Mr. Thomas?

16 MR. THOMAS: Yes, it is, Your Honor, and for the record
17 I would like to state that the State is also available on any
18 date.

19 THE COURT: Any objection, Mr. Creech, to letting this go
20 to the 30th and have a further hearing on the change of venue?

21 MR. CREECH: No, sir.

22 THE COURT: All right, I'll continue the matter to
23 June 30th at 3:30.

24 Are Counsel stipulating this matter can be taken up
25 here in Ada County in chambers, then?

1 MR. ROBINSON: I would so stipulate.

2 MR. THOMAS: The State would stipulate to that condition,
3 Your Honor.

4 THE COURT: Is that agreeable, Mr. Creech?

5 MR. CREECH: Yes, sir.

6 THE COURT: If you wanted to be taken back to Cascade
7 for this hearing you may be, but if you are willing to hear it
8 in the Ada County chambers we'll do it then. Is that agreeable
9 with you?

10 MR. CREECH: Yes.

11 THE COURT: All right, the matter will be further
12 considered, then, on June 30th at 3:30 at chambers here in
13 Ada County.

14 MR. ROBINSON: Thank you very much, Your Honor.

15 THE COURT: The defendant will be remanded to the
16 custody of the Ada County Sheriff, then.

17 (Whereupon the proceedings were concluded.)
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1 BOISE, IDAHO, MONDAY, JUNE 30, 1975, 3:30 P.M.

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4 THE COURT: State versus Creech.

5 This was the time to which further hearing on the
6 matter of venue, fixing the venue in the case was set at your
7 request, Mr. Robinson.

8 Are you prepared to take that up at this time?

9 MR. ROBINSON: Yes, Your Honor.

10 THE COURT: All right, I'll hear anything you have to
11 present.

12 MR. ROBINSON: Counsel, if it please the Court: Your
13 Honor, since our last appearance here in court June the 9th,
14 1975, I individually have made considerable research, not only
15 as to the extended news media coverage in regards to
16 Thomas Eugene Creech and his involvement in this charge against
17 him here in the State of Idaho; that research has concluded.

18 My contact totally this past week in the joint
19 meeting of the Idaho State Bar and Alaska Bar in Vancouver,
20 Canada; talking with various other attorneys throughout this
21 state and I have come to the conclusion that I am requesting
22 the Court to transfer this matter for trial to Coeur d'Alene,
23 Idaho. It is, from my research and belief, that in
24 Coeur d'Alene, Idaho is, possibly, the only place in the State
25 of Idaho that has not been deluged with the overcoverage of

1 the media.

2 In that examination I would note to the Court on the
3 record that Coeur d'Alene is in close proximity to the metropolis
4 of Spokane. Most of the residents read mostly the Spokane
5 newspaper and that the North Idaho area clear in the panhandle
6 is clear of any prejudicial prior news media releases regarding
7 the circumstances of this case.

8 I had previously, on the "6th" of June, related to
9 the Court that potentially it was going to be our desire to
10 remove this case to Wallace, Idaho; in Shoshone County. The
11 reason that I have changed my opinion in that regard is not
12 necessarily a selfish motive, but one of convenience to all
13 counsel that may be engaged in the trial of this matter far
14 from the location of our homes and offices.

15 Since it is my anticipation that a proper defense
16 in this case will take anywhere from three to six weeks,
17 depending upon ruling of the Court and many motions that would
18 be made prior to the actual trial itself that accommodations
19 for counsel would be best satisfied with those facilities that
20 are available in Coeur d'Alene. It would not necessitate
21 counsel that are on this case from the Attorney General's
22 office and for the defense of the travel of, I think at some
23 45 to 50 miles from Coeur d'Alene over to Shoshone and that
24 we would be able to commence the trial each day at 9:00 a.m. and
25 carry this same throughout the day and making the most of every

1 court day during the course of the trial.

2 The additional circumstances I find favorable to
3 Coeur d'Alene is that it is only 35 miles from the Spokane
4 airport where we will be able to get in and out by commercial
5 aircraft and not be put to the uncertainty of small craft on
6 charter. So, for those reasons I would request this Court and
7 do move the Court to make its order changing the venue and
8 site of the trial of State versus Thomas Eugene Creech to
9 Coeur d'Alene, Idaho.

10 THE COURT: Mr. Thomas?

11 MR. THOMAS: Your Honor, if the Court please. I have no
12 real objection to most of the things that Mr. Robinson has
13 said but there is one other consideration that I think is
14 important to take into account and that is the nature of the
15 jail and security facilities.

16 I haven't personally inspected either the
17 facilities in Coeur d'Alene or those at Wallace; which is the
18 place we discussed earlier. However, I have conferred with the
19 Prosecuting Attorney in Coeur d'Alene, Mr. Hamann, who
20 indicates to me that he believes, at least, that the jail
21 facilities and security facilities at Wallace are superior to
22 those at Coeur d'Alene and I would simply call that matter to
23 the Court's attention.

24 The facility at Wallace is relatively new and
25 provides convenient and immediate access from the jail to the

1 courtroom without any undue security problems. I don't know
2 specifically what the situation would be with the jail at
3 Coeur d'Alene but I understand it is an older jail and the
4 convenience of the courtroom is not the same as it is in
5 Wallace.

6 Mr. Hamann did indicate to me, however, that he
7 did not believe that publicity in that part of the state had
8 been very great.

9 MR. ROBINSON: May I be heard further, Your Honor?

10 THE COURT: Yes.

11 MR. ROBINSON: Your Honor, I failed to mention when I
12 originally covered this subject matter that I had also, in
13 Vancouver, Canada, covered the subject matter in a discussion
14 with Mr. Robert Remaklus, the Prosecutor of Valley County, and
15 his direct comment to me was that he did not intend to be here
16 today and that he had no objection as to Coeur d'Alene. He
17 didn't really care where it was tried.

18 I would like to relate too what Mr. Thomas has
19 just advised the Court and also bring in another matter that
20 I believe might have some bearing on the Court's making this
21 decision.

22 I am advised that the Sheriff in Coeur d'Alene is
23 an ex-FBI agent and is thoroughly trained with background for
24 security and I relate to the Court the security is necessary,
25 not only for the incarceration and maintenance of the custody

1 of Mr. Creech but, possibly, security for some unknown, outside
2 influence.

3 I was advised regarding the Shoshone County Jail
4 that it is a renovation and they have a little finer security
5 area, I -- and I can't represent to the Court that I have
6 personally inspected the Coeur d'Alene Jail. But, regardless,
7 I would feel that the personnel that is involved in
8 Coeur d'Alene and the facilities that they do have for maximum
9 security would be, not only adequate, but quite sufficient to
10 handle Mr. Creech during the time that he is there.

11 Which brings me to another matter that I believe
12 the Court should take into consideration in making its
13 mind up regarding the location of the change of venue. That is
14 that a request, and I will be making a motion, or make that
15 motion at this time if the Court feels it's in line, that
16 Mr. Creech is in close proximity to his counsel, my practice
17 being in Nampa, Idaho, some 18 miles away, and his
18 incarceration here in Ada County.

19 I am presently in the position, having been
20 representing Mr. Creech for a period from approximately the
21 29th of May to the present time, other counsel; the State
22 having had access and consultations with Mr. Creech over a
23 period of eight months prior to my involvement and I find that
24 on my accelerated basis of becoming acquainted with all the
25 factors involved in this case that it is necessary for me to

1 spend multitudes of hours with Mr. Creech and in order to
2 avail myself of his knowledge of all of the circumstances.

3 So, even though the Court makes up its mind as to
4 the location and change of venue that I would move the Court
5 that Mr. Creech be held in custody here in Ada County for so
6 long a period of time that his counsel feels that the close
7 proximity for preparing his defense is needed and necessary
8 or, for that matter of fact, possibly because of the facilities
9 here at the Ada County Jail, to hold Mr. Creech here until
10 time of trial.

11 So, I don't believe with that taken into
12 consideration the older jail in Coeur d'Alene should have that
13 much bearing on the Court's decision as to whether or not the
14 Court desires Coeur d'Alene for the venue of the action.

15 I would add one other further thing, Your Honor.
16 I have already set in motion a private medical doctor for
17 complete medical examination and work-up for the defense of
18 Mr. Thomas Creech.

19 Incorporated within this medical work-up would be
20 a brain scan, EEG, EKG, Glucose Tolerance Test; all of which
21 will take a little time. We're working in cooperation with
22 Sheriff Palmer and it is my understanding that this
23 cooperation did not -- these tests being performed over the
24 last week since it is the feeling of the Sheriff's office
25 and I believe this Court, that an order should be entered in

1 that regard. It's also my understanding that the State is
2 going to be willing to stipulate to the allowance of this
3 independent medical examination. We also, on the defense, are
4 anticipating that we will be retaining the services of two
5 psychiatrists, one from Lewiston and one from Salt Lake City,
6 and with the flight facilities into Boise, they would find that
7 this location is more accessible than any other location.

8 For these reasons all taken into consideration,
9 plus the research as I have informed the Court, that I have
10 made, are in the basis, not only of our request for
11 Coeur d'Alene to be the site of the venue change, but the
12 Court to order Mr. Creech held in the Ada County Jail for the
13 convenience of counsel, medical doctors and psychiatrists.

14 MR. THOMAS: Your Honor, with respect to the transfer
15 of Mr. Creech to Coeur d'Alene, the State has no objection to
16 having him held in the Ada County Jail until the trial is
17 ready to begin. I have been advised, however, that if the
18 Court determines that he should be, at this time, transferred
19 to the place where the change of venue is to be located, that
20 the Valley County Sheriff is not -- would be unable to do that
21 until the 4th of July weekend.

22 With respect to Mr. Robinson's comments about an
23 order for medical examination, the State does not object to
24 the Court entering an order to having Mr. Creech examined;
25 either by general practitioners or psychiatrists or any other

1 kind of specialists. We do believe that the State is entitled
2 to copies of the doctors' reports in that respect and we would
3 stipulate that the Court may enter an order to that effect.
4 But, we do believe that it should be specified in the order
5 precisely what kind of examinations to be conducted -- or is
6 to be ordered.

7 THE COURT: I would like to ask Counsel in connection
8 with your research and in your investigation into venue
9 where the problems that have heretofore existed in this case
10 could be somewhat alleviated, or avoided, whether you've looked
11 at Eastern Idaho and if you have, what your findings have been
12 as to Idaho Falls or some place in Eastern Idaho?

13 MR. ROBINSON: Addressing myself to that, Your Honor,
14 yes, I have in some detail addressed myself to the Eastern
15 Idaho area. I do not want to make any comment regarding the
16 populus -- derogative comments regarding the populus in
17 Eastern Idaho. I find that it presents two factors that we
18 cannot conquer.

19 Number one, Eastern Idaho is most tuned into
20 reading of the Statesman newspaper; although they have
21 newspapers of their own, the Statesman is from the capital
22 city and I believe that Eastern Idaho is more tuned into the
23 Statesman and that there have been multitudes of articles
24 printed in the Statesman that have been reprinted in both the
25 Idaho Falls and Pocatello papers.

1 The other facet of the research that we have made
2 is that reaching either from Salt Lake or from Boise by air,
3 either Pocatello or Idaho Falls presents some difficulty from
4 reaching these areas on flight schedules and I would advise
5 the Court that in this way that we have taken Eastern Idaho
6 into consideration, I feel the news media has, possibly,
7 caused an undertow of comment, or thought, that it would be
8 more difficult to arrive at, and secure an unprejudiced,
9 unbiased jury in that locale than it would be in the north
10 panhandle area and, specifically, Coeur d'Alene.

11 THE COURT: Mr. Thomas?

12 MR. THOMAS: Your Honor, with respect to the
13 publicity in Eastern Idaho, it's my understanding that the
14 Statesman, for one thing, is not even circulated in Idaho Falls.
15 I don't know what newspaper articles may have been -- appeared
16 there. My impression from having surveyed very briefly the
17 newspapers, or at least some of them, in the Eastern Idaho
18 area there hasn't been, at least the kind of saturation
19 coverage that there has been in this area.

20 I might call Your Honor's attention, if you haven't
21 already observed it, to a case that the Supreme Court of the
22 United States has handed down within the last couple of weeks;
23 the case of Jack Roland Murphy versus the State of Florida on
24 the case of pretrial publicity and it appears in 43 Law Week,
25 4730. The Court has made clear that it is not necessary to

1 find a jurisdiction where the jurors are completely --
2 prospective jurors are completely unexposed to any publicity.

3 While the Court makes claim that the kind of
4 saturation coverage that we had in the Cascade area does
5 mandate a change of venue, the Court says, "Qualified jurors
6 need not, however, be totally ignorant of the facts and
7 issues involved to hold that the mere existence of any
8 preconceived notion as to the guilt or innocence of the
9 accused without more is sufficient to rebut the presumption
10 of a prospective jury's impartiality would be to establish
11 an impossible standard."

12 "It is sufficient that a juror can lay aside his
13 impression or opinion and render a verdict based on the
14 evidence presented in court."

15 As far as the publicity coverage is concerned,
16 there is nothing that has come to our attention that
17 indicates that in Eastern Idaho the situation would be such
18 that it would be impossible to establish a venue there which
19 would result in a fair trial.

20 Again, I can't speak with respect to the
21 facilities there, because the State has not inquired into the
22 jail and courthouse facilities in the Eastern Idaho
23 communities.

24 THE COURT: Have you -- either counsel inquired into
25 the trial calendars in these localities, Coeur d'Alene,

1 Wallace, Idaho Falls?

2 MR. THOMAS: The State has not, Your Honor.

3 MR. ROBINSON: The defense has not, Your Honor.

4 THE COURT: Is that a matter of concern to you, a
5 matter of an early trial setting?

6 MR. ROBINSON: It hasn't been a matter of concern to
7 me, Your Honor, because I am in hopes that there will be a
8 delay of three to four months, not only for the ability to
9 work Mr. Creech's defense into the proper order for trial and
10 also to allow what past news media coverage that has been
11 to cool off. So, this has not really been a concern.

12 I certainly am aware that every Judge in the
13 State of Idaho has a crowded calendar and that in my Third
14 District and here in the Fourth District it probably is late
15 October or early November that -- at the soonest, that any
16 Court could specifically set aside three to six weeks and,
17 possibly even into December or January.

18 MR. THOMAS: Your Honor, it is a matter of concern to
19 us that the case be brought to trial in an expeditious manner
20 because it has already been -- the Court is aware of some
21 delay up to this point and I feel that we should go to trial
22 as soon as possible. So, the Court's calendar would be of
23 concern.

24 THE COURT: Anything you'd like to say in this regard,
25 Mr. Creech --

1 MR. CREECH: No, sir.

2 THE COURT: -- that hasn't been covered by the attorneys?

3 MR. CREECH: No.

4 THE COURT: Well, I can further explore, by talking to
5 the Administrative Judges in these various localities, the
6 matter of their trial calendar; status of their trial calendar
7 as far as available trial settings and also the physical
8 facilities that exist in those various localities.

9 I could do that either on my own and, then, make a
10 decision based on what Counsel have presented here or I could
11 advise Counsel what I've discovered and let you respond to it
12 if you want to. I feel, rather than making decisions at this
13 time I would like to call the Administrative Judge that's in
14 charge of the areas you've located, talked about, and discuss
15 those matters with them, if you are willing to then have me just
16 go ahead and make the decision I'll do that. Or, if you'd
17 like to have a further conference and have me advise you of
18 what I've discovered in that conference with those Judges, then,
19 I could do that and let you respond to that information.

20 MR. ROBINSON: I would like to have it the latter way
21 that the Court has suggested; a further conference so that
22 we're fully apprised of all the circumstances, specifically the
23 facilities and the crowded calendar condition.

24 THE COURT: All right. On the other motions you've made,
25 Mr. Robinson, I feel it would be inappropriate for me to

1 purport to rule on those. I think there's, probably, a serious
2 question. The only jurisdiction I have, other than I think I
3 do have jurisdiction to determine where Mr. Creech should be
4 held until I actually locate the new venue, but I think apart
5 from that, about the only jurisdiction I should exercise
6 appropriately is to change the venue and, then, it would be up
7 to the Judge, Presiding Judge in the new venue to rule on the
8 matters you've proposed here; both as to the location and
9 Mr. Creech, as far as his custody pending trial and any other
10 pretrial motions you have.

11 MR. ROBINSON: May I speak with the Court?

12 THE COURT: Yes.

13 MR. ROBINSON: Your Honor, the two motions that I have
14 made, one relating to the medical examination, I'm sure that
15 that is, more or less, settled by stipulation and --

16 THE COURT: I haven't received any stipulation, so --

17 MR. ROBINSON: No, it's not in written form, Your Honor,
18 the stipulation as to what we have discussed.

19 THE COURT: I would want a written stipulation.

20 MR. ROBINSON: Yes. And on that particular matter the
21 medical examination, we would appreciate it if the Court would
22 receive a written stipulation and execute the accompanying order;
23 it being in line.

24 Regarding the security and being kept in proximity
25 of Boise, if this also is a matter of written stipulation we

1 would appreciate the Court's maintaining jurisdiction of the
2 case to sign the appropriate order to that stipulation.

3 THE COURT: I don't think you've -- I don't think you can
4 confer that kind of jurisdiction on me by stipulation. I don't
5 have any problem about examinations while Mr. Creech is here in
6 the physical jurisdiction of the this court on stipulation.

7 However, I think the statute is very clear; that
8 once the change of venue -- the custody is changed by statute
9 to the new venue. I wouldn't even entertain a motion upon
10 stipulation to make that determination after the venue is
11 changed. I think that lies solely in the Judge that resides in
12 the new venue.

13 MR. ROBINSON: Possibly we can defer that for the
14 decision until the decision on the change of venue and we know
15 who the Presiding Judge will be.

16 THE COURT: I don't think -- I don't anticipate there
17 will be any particular problem. I think the Presiding Judge
18 of the new venue will make the determination I could and I don't
19 think there's any limitation on his jurisdiction to have him
20 kept here in Ada County. But, I think that has to be his
21 determination and not mine under the statute.

22 MR. ROBINSON: We do have one other matter, Judge Durtschi,
23 to maintain jurisdiction to make an order.

24 You, as Presiding Judge, have been involved in the
25 State versus Creech case for quite some time and you had

1 entered a publicity order in this matter and we do have a
2 joint press release to submit to the Court at this hearing for
3 the Court's approval; showing that it is within the scope of
4 the Court's previous publicity order entered in this case and
5 secure the Court's permission to release this press release to
6 the media today.

7 Now, since the Court has now indicated that the
8 Court wants to check with the Court Coordinator and secure
9 some other information before making a decision on the change
10 of venue, may we address ourselves to the press release at this
11 time?

12 THE COURT: Yes.

13 MR. ROBINSON: Mr. Bailiff, if you would, please, hand
14 this to His Honor.

15 Your Honor, we would want this specific writing,
16 with a duplicate copy of the Court's Publicity Order attached
17 to it as a release.

18 THE COURT: Do you want to make any comments on this?

19 MR. THOMAS: No, Your Honor. We are in agreement with
20 this release.

21 MR. ROBINSON: So the record is straight, Your Honor,
22 this writing that you have in your hand, this proposed release,
23 was prepared by the Attorney General's Office, approved by
24 Mr. Remaklus, the Prosecutor, and it has the approval of the
25 defense. Is that correct, Mr. Thomas?

1 MR. THOMAS: That is correct except to also say that
2 Mr. Remaklus has not seen the specific wording. I have
3 conferred with him on the essence of the material contained
4 herein and he indicated to me that he would be satisfied with
5 anything that the Court approved.

6 MR. ROBINSON: We feel, Your Honor, that the words
7 contained therein are in complete conformity with the Court's
8 publicity --

9 THE COURT: Yes, I think -- I feel what you have said
10 here is not in violation in any respect with the order I
11 rendered and I would not object to you making this, if you
12 wanted to.

13 MR. ROBINSON: Your Honor, may I read this particular
14 press release upon the minutes of this proceeding?

15 THE COURT: You can enter that copy if you want without
16 reading it.

17 MR. ROBINSON: I don't have another copy for myself,
18 Your Honor -- yes, I can do that.

19 THE COURT: You can substitute a copy. I can have the
20 Clerk substitute a copy and I'll just enter it as a part of
21 the Court's minutes.

22 MR. ROBINSON: All right.

23 THE COURT: And I will ask the Clerk to substitute
24 copies so you'll have the copy returned to you.

25 MR. ROBINSON: Thank you very much, Your Honor.

1 MR. THOMAS: I'll get you another copy. It won't be
2 necessary for the Clerk to substitute a copy.

3 MR. ROBINSON: I would imagine that the media will want
4 a copy of that, but also a copy of the Court's previously
5 entered Publicity Order and --

6 THE COURT: Could I have copies of that?

7 MR. ROBINSON: A multitude of maybe ten, twelve copies,
8 Your Honor --

9 THE COURT: Well, I can run more off.

10 MR. ROBINSON: All right, sir. I'm a little unsure
11 what the Court's intention is right at this moment, Your Honor
12 as to taking a recess to discuss further with the Court
13 Coordinator or to continue the final decision to a different
14 day.

15 THE COURT: Well, I'm looking at dates here. I suspect
16 some of those Judges have gone to that conference. I don't
17 know whether they are back yet or not.

18 MR. ROBINSON: Some of them, I'm sure, are not.

19 THE COURT: The 4th of July weekend coming up.

20 I think -- I'm sure to have an opportunity to
21 get in touch with the Judges I need to talk to before
22 proceeding in this, we'd probably -- we should continue it
23 until -- I was going to say the 8th or 9th, but I have a
24 two-day jury trial in Elmore County so I won't be here on t
25 8th and 9th.

1 Perhaps July 10th. Is that available to you,
2 Mr. Robinson?

3 MR. ROBINSON: It would be Thursday? Yes, Your Honor,
4 I will be back from a trip.

5 THE COURT: Well, you put that on the calendar at
6 3:30 on July the 10th, then, and I'll advise Counsel at that
7 time what I've determined in talking with the Administrative
8 Judges.

9 MR. ROBINSON: And Your Honor will be submitting, then,
10 a stipulation on the medical examination?

11 THE COURT: Yes, I don't have any problem with any
12 stipulated medical examinations.

13 MR. ROBINSON: And may we just present that to the
14 Court in chambers?

15 THE COURT: Yes.

16 MR. ROBINSON: Thank you very much, sir.

17 THE COURT: All right, the matter will be continued,
18 then, until July 10th at 3:30 and you will be remanded to the
19 custody of the Ada County Sheriff, Mr. Creech.

20 We'll be in recess.

21 (Whereupon the matter was concluded.)
22
23
24
25

1 BOISE, IDAHO, THURSDAY, JULY 10, 1975, 3:30 P.M.

2
3
4 THE COURT: I'm going to take up State versus Creech
5 at this time.

6 Counsel have anything further to present in this
7 matter, Mr. Robinson?

8 MR. ROBINSON: Yes, I do, Your Honor. If it please the
9 Court, the last time we were in court I had made several
10 statements in regard to the publicity aspect of this case and
11 the uniqueness of this case and, for the record, Mr. Lynn Thomas
12 and I last Monday did make contact with the Court. I have
13 advised the Court that we believe that this case can be
14 tried and select an unbiased jury at any other place in the
15 State of Idaho save and except where the Court has already
16 ruled that a jury could not be selected.

17 I believe, because of security measures, that
18 are necessary because of the logistics, cost and expense of
19 witnesses, the ability of Mr. Creech's counsel to have
20 constant contact with him between now and the time of the
21 trial that this matter should be set in venue here in Ada
22 County; that Mr. Creech remain incarcerated under the control
23 and custody of Sheriff Palmer in whose custody he has been
24 almost his entire time since apprehension in Glenss Ferry,
25 November 8th of 1974.

1 In our discussion we have suggested to the
2 Court, because of the crowded condition of the Court's calendar,
3 that this trial more than likely will take three to six weeks
4 at a minimum and that possibly the Court Coordinator could
5 assign Judge Scoggins, retired, to preside at the trial of
6 this matter.

7 For those reasons I would move this Court to
8 set the venue and trial of this case in Ada County, State of
9 Idaho.

10 THE COURT: Mr. Thomas?

11 MR. THOMAS: If Your Honor please, the State would
12 have to object strenuously to setting the venue in this
13 county. I think the reasons for which the Court transferred
14 the venue from Valley County to another as yet unnamed
15 location which still persists, we have the problem of a
16 massive amount of publicity without a substantial amount of
17 time having lapsed between the time of that publicity and
18 the time of trial to take place.

19 As I indicated to Your Honor when we were present
20 in chambers last Monday, I had made some contact with the
21 newspaper and television station in Twin Falls with an eye
22 towards determining how much publicity they had given to this
23 case and I did receive documentation of all of the newspaper
24 clippings which could be found which had appeared in the
25 Times News, together with copies of the news stories,

1 broadcasts on the local television station there.

2 I would submit a copy of those documents at this
3 time to Your Honor for your consideration.

4 THE COURT: Your surveys show how many people in that
5 county subscribe to the Statesman?

6 MR. THOMAS: No, it did not.

7 There was very little time for us to even get
8 this material and I simply submit this as representative of
9 what has appeared in the media there.

10 It does not appear that a major amount of attention
11 has been paid to this case. The newspaper and television
12 news personnel I spoke to there indicate that they considered
13 this a story of little importance and had not given it a
14 great deal of play; although the Court will notice there are
15 some of the facts which appeared in the Statesman articles
16 which have been repeated here. Most of them having been,
17 apparently, transmitted by wire service.

18 In any event, I would point out that none of
19 these items contain any expressions of opinion of innocence
20 or guilt; they are, generally, restricted to factual
21 circumstances of events occurring in relation to the case.

22 So, we would suggest that the Court give
23 consideration to that and I would further point out once
24 again that the State has no reason to believe that Wallace,
25 which had been discussed before, would cause any problem with

1 respect to obtaining a jury. Obviously no matter where we go
2 in the State we're going to find that prospective jurors have
3 probably read something or other about this case. However,
4 the case law indicates, as we understand it, that mere
5 exposure to potentially inflammatory information is not the
6 governing factor. We do, again, call attention to the
7 security problem which they -- we would agree with what
8 Mr. Robinson has suggested; that it is necessary, wherever
9 we go, that there be adequate security for the prisoner, both
10 during the trial and up until the time of the trial.

11 I don't have any idea what kind of security
12 problems we might face, but there is enough in this case to
13 certainly lead us to believe that adequate security should be
14 given attention with respect to the place to which venue is
15 changed.

16 THE COURT: Mr. Robinson?

17 MR. ROBINSON: Yes, Your Honor. Mr. Thomas,
18 Your Honor, we have closely scrutinized all of the articles
19 that have been published by news media that have been spoken
20 of on the television stations in regards to this case in
21 Southwest Idaho.

22 We feel that we're fully apprised of what
23 possible effect they might have on the selection of a jury.
24 In light of that, I do advise the Court that we feel that we
25 can select an unbiased, non-prejudicial jury here in

1 Ada County.

2 I strenuously emphasize our logistics problems. I
3 anticipate that during the course of the defense I will be
4 calling each of the Deputies that have had charge of Mr. Creech
5 during his long incarceration here. This, in itself, if we were
6 anywhere else, would disrupt the operation of the Ada County
7 Jail.

8 We have the Court-appointed psychiatrist,
9 Dr. Estess, Dr. Heyrend and others that are located here
10 locally that have assisted and participated in investigations.

11 For just the sheer magnitude of the amount of
12 expense that would be tacked onto moving this case anywhere
13 else, other than right here, is one of the considerations I
14 urge the Court to consider very strongly.

15 Now, as far as security is concerned, Sheriff Palmer,
16 as the Court is aware, has been investigating in this case and
17 he, as a person in charge of law enforcement for the county,
18 is most aware of all of the circumstances of this case.

19 As the Court pointed out, to move this case in any
20 other venue would necessitate immediate transfer and transporting
21 of Mr. Creech to that jurisdiction. For him to be held at some
22 other jurisdiction would entail us educating another law officer
23 in that area as to the magnitude of the necessity of security
24 and that we feel that, because of all these circumstances, that
25 there is adequate court space in Ada County and, if the Court

1 would consider the assignment, or the request to the Court
2 Coordinator of the assignment of the Presiding Judge, I believe
3 that we can cause this matter to come quickly to trial.

4 THE COURT: I don't know where you get all the court
5 space in Ada County. If you tie up one of these courtrooms for
6 three to six weeks, Mr. Robinson, we wouldn't need another
7 Judge to come and try it. We'll have one sitting around without
8 any courtroom to try anything else in, so he might as well try
9 it.

10 What I'm curious, Mr. Robinson, when you speak of
11 "three to six weeks" of trial, how much of that time are you
12 allowing to selecting the jury?

13 MR. ROBINSON: Two to three days at the very most,
14 Your Honor.

15 My anticipation is that the defense of this case will
16 take four weeks alone. I might suggest this, Your Honor,
17 Canyon County does have the new court facility, there are three
18 District Judges, one of whom is chambered in Weiser, our
19 Chief Judge, Judge Norris and that those three new courtrooms,
20 one of those three would not be filled up at all times and they
21 -- just below them are four new courtroom facilities; that if
22 the jurisdiction was here in Ada County that we could stipulate
23 that the actual trial be held in Caldwell; which is in close
24 proximity, not only to this jail and the security, but also a
25 very adequate facility in Caldwell.

1 I don't believe that we would have any difficulty,
2 either in Ada or Canyon County selecting a jury that's not biased
3 and non-prejudiced.

4 Another thing crossed my mind. I don't know that
5 there's been any reciprocity between the State and Federal
6 courtroom facilities ever used and I have not checked out the
7 availability of either one of the courtrooms for a trial of this
8 length in the Federal Court here in Boise. So, I can't speak
9 or address the Court that I have any particular knowledge as to
10 the availability of those facilities but it's another thing that
11 possibly could be checked.

12 THE COURT: Any further comments, Mr. Thomas?

13 MR. THOMAS: Yes, Your Honor. With respect to trying
14 the case in Caldwell, I would simply reiterate what I said a
15 moment ago. I think that Caldwell presents the same kind of
16 problems we have for trying the case here. We have the same
17 source of pretrial publicity that would be prevalent in that
18 area as would have been prevalent in Valley County and,
19 frequently, the -- because of the amount of publicity and the
20 amount of local interest, both, Cascade and that certainly is
21 extended into this area; that a good many of the people that
22 might be selected for jury duty would probably have already
23 read all of that material and we would have the same kind of
24 problem in finding jurors who would not only form strong
25 opinions of the defendant's guilt in Caldwell as we would have

1 had had the case gone on in Valley County.

2 The Court is aware of the problems that we had
3 there, we continued to believe that it is important that the
4 case be removed from this immediate area.

5 THE COURT: Well, after our last conference I, following
6 the same practice I advised Counsel I was going to do, as far
7 as Coeur d'Alene when that was suggested. I have talked to the
8 Administrative Judge in the Fifth District and also to the
9 Senior District Judge in Twin Falls and they tell me we have the
10 same problem there that we would run into in Coeur d'Alene as
11 far as tying up courtrooms and calendaring.

12 They simply tell me that as far as newspaper
13 subscriptions, most prevalent paper down there is the Statesman
14 so I'm convinced, considering all the matters that are
15 significant as far as calendaring, available courtrooms,
16 available security, type of security facilities, type of jail
17 facilities and the problem of pretrial publicity of which, of
18 course, I'm very much aware having gone through several days of
19 trying to pick a jury already in Valley County, that the only
20 feasible venue to change this case to is Shoshone County in
21 Wallace and I'm going to order the venue changed to Wallace,
22 Idaho.

23 I don't think that precludes asking the Judge,
24 Judge Towles, for an order allowing Mr. Creech to stay in
25 Ada County. I think he would have the same jurisdiction to

1 make that kind of an order that I did when he was in Valley
2 County. That would have to be presented to him. I want you to
3 prepare appropriate findings and order, Mr. Thomas.

4 MR. THOMAS: Thank you, Your Honor.

5 THE COURT: You will be removed to the custody of the
6 Sheriff, Mr. Creech, at this time.

7 MR. ROBINSON: Judge, a point of information, or
8 inquiry, Your Honor. Is it this Court's understanding that
9 Mr. Creech is to be transported forthwith to the new jurisdiction
10 and that we would have -- necessary to appear before
11 Judge Towles in Wallace to secure any kind of an order for
12 transporting Mr. Creech back to Boise during the interim time?

13 THE COURT: No, I'm willing to correlate it, if you want
14 to, once the order is signed for change of venue, if you want
15 some time to approach Judge Towles to see if he would consider
16 signing an order to have Mr. Creech remain here in Ada County
17 Jail pending trial, I would give you that time before I would
18 enter an order, actually ordering him. I think it involves a
19 separate order.

20 MR. ROBINSON: All right, sir, I would appreciate that.

21 THE COURT: So, I'll let you work that out.

22 MR. ROBINSON: Thank you very much, Your Honor.

23 (Whereupon the hearing was concluded.)
24
25

1 BOISE, IDAHO, FRIDAY, SEPTEMBER 5, 1975, 9:30 A.M.

2
3
4 MR. ROBINSON: Your Honor, preliminarily, may I request
5 that the Court -- to post the courtroom so that we may have
6 no spectators, other than the court staff, counsel and my staff.
7 I intend to say several things that I do not want, in any way,
8 shape or form, to leak out and be an affront to this Court's
9 gag order.

10 THE COURT: Well, we can have a pretrial conference in
11 chambers when you get to the point of having to say those things.
12 I don't see any point in excluding everybody for the purpose of
13 considering the motions.

14 MR. ROBINSON: Everyone here, Your Honor, is staff or
15 otherwise, just talking about persons that may just walk in.

16 THE COURT: All right. I have several motions by the
17 State. I'm going to take those up first and, then, I think the
18 easiest way to take care of them is just inquire as to each
19 motion that's been lodged and filed here, what your position is
20 on it, if you don't have any objection I'll simply grant it
21 without comments or argument, Mr. Robinson.

22 I'm not taking these in any particular order, just
23 the order which they came off. The first one I pick up is a
24 Motion for Production of Handwriting Exemplars. Do you have any
25 objection to that motion?

1 MR. ROBINSON: Yes, Your Honor, I must go on record as
2 objecting to it and may I explain myself, sir?

3 THE COURT: Yes.

4 MR. ROBINSON: It appears that on March the 8th, 1975
5 a handwritten manuscript written by the defendant admitting to
6 some 51 or 52 homicides was delivered to Ken Matthews and others
7 and this particular manuscript is in the hands of many, many
8 people; some of which were made during the nights that
9 Mr. Creech was in Cascade and the Deputy Sheriff stayed up all
10 night making six copies.

11 We have requested those so the AG's office to be
12 returned to Mr. Remaklus. My point is that this being in
13 Mr. Creech's own handwriting the handwriting expert
14 identifying the handwriting, it is a voluntary confession in
15 some 23 jurisdictions of first degree murder and admissible in
16 any of those jurisdictions and I must go on record as opposing
17 this particular motion based upon those reasons.

18 I would be remiss in my duty if I did not do so.

19 THE COURT: Well, I don't have the admissibility of that
20 document before me. I don't think that's, really, relevant to
21 this motion. I'll hear anything you have to say, Mr. Thomas.

22 MR. THOMAS: Your Honor, with respect to the handwriting
23 exemplars, of course, handwriting goes simply to identification
24 of evidence and, frankly, we have no plan to attempt to
25 introduce the document that Mr. Robinson has spoken about.

1 Our motion goes to the necessity to identify some
2 other statements that Mr. Creech has written and which we may
3 attempt to introduce into evidence. Since we do not anticipate
4 the defendant will stipulate that these -- that the identity of
5 those documents is the defendant's, it's necessary for us, in
6 order to be able to identify the author of the documents, to
7 put on the evidence through the handwriting expert that we hope
8 to appoint. I think that it's clear and there's abundance of
9 authority on it; that a defendant may be required to produce
10 handwriting exemplars and other kinds of evidence of identity
11 and this is nothing more than that kind of process.

12 MR. ROBINSON: May I be heard further, Your Honor?

13 THE COURT: Yes.

14 MR. ROBINSON: I have just now been advised by what
15 Counsel has stated that there are other matters in handwriting
16 and I'm familiar with the file as I'm sure the Court is, of
17 the previous orders of this Court requiring discovery and
18 copies of whatever Mr. Thomas is speaking of that have never
19 been delivered to this Counsel and I have not had an opportunity
20 to appraise that on the handwriting or the necessity of
21 handwriting.

22 THE COURT: I think Counsel are still just talking about
23 collateral matters. I don't think it matters whether, as far as
24 this motion is concerned, whether there's a document that hasn't
25 been delivered pursuant to discovery or not. That's a separate

1 matter you might very well be entitled to some relief because
2 of failure to comply with discovery orders, but that has nothing
3 to do with whether they can get a copy of Mr. Creech's
4 handwriting. That's the only thing I have before me on this
5 motion. I simply want to know whether there's any authority
6 or law that would prevent the Court from requiring a defendant
7 in a criminal action to produce handwriting for whatever
8 purpose it's to be used.

9 I think the fact that you make them give an
10 exemplar does not mean that the documents they want to identify
11 are admissible for any purpose, that's a separate question that
12 will have to come before the Court and be ruled on on its
13 merits. By ordering handwriting the Court certainly isn't
14 making any ruling on admissibility of documents that happen to
15 be in the defendant's handwriting.

16 I was under the impression that we had a statute,
17 or rule, on that. I had several presented by the Prosecuting
18 Attorney of Ada County and there was never, really, any
19 objection to it, so you didn't have to --

20 MR. THOMAS: The State would be willing to submit a
21 brief on that point.

22 THE COURT: I don't think I need a brief.

23 Well, I'm going to defer this for a little while.
24 I can't find that statute I'm referring to.

25 All right, there's a Motion for Psychiatric Study.

1 Do you have any objection to that?

2 MR. ROBINSON: No, Your Honor, and may the record show
3 that with Mr. Thomas' permission and discussion with him my
4 associates, Mr. Robert Jones and Gary Lou and I spent from
5 9:30 last evening until fifteen past midnight talking with
6 F. LaMarr Heyrend, psychiatrist, in this matter, along with
7 Dr. Estess, and we discussed this and I'd like to address the
8 Court further on it. But, I have no objection to this motion
9 at all.

10 THE COURT: All right, that motion will be granted.
11 You can prepare an appropriate order to that, then.

12 Those are all the State's motions I had. Were
13 there any others?

14 MR. THOMAS: No, Your Honor, that concludes them.

15 THE COURT: All right, I'm just going to go through the
16 defendant's motions; again, now, simply in the order I have
17 them here in the stack without any -- I have the first one that
18 comes up is a Motion for Discovery and Inspection. Do you have
19 any objection to that?

20 MR. THOMAS: No, Your Honor.

21 THE COURT: All right, that will be granted. If you
22 would prepare appropriate orders, Mr. Robinson.

23 MR. ROBINSON: Thank you, Your Honor.

24 THE COURT: The next is simply a Notice of Association
25 of Co-Counsel. I take it there's no requirement for ruling

1 of the Court on that?

2 MR. ROBINSON: No, I -- may I advise the Court that
3 we recently have filed Professional Association Articles with
4 the Secretary of State and these gentlemen are part of the firm
5 now.

6 THE COURT: Next motion I have is a Motion to allow
7 defendant to have a typewriter and writing paper in the jail.
8 Any objection to that?

9 MR. THOMAS: I would just say this, Your Honor: I don't
10 know the reason that the Sheriff of that county has denied the
11 defendant the use of the typewriter. Conceivably it is for
12 some reason of maintenance of discipline in the jail. I would
13 not want to agree to that to supercede the Sheriff's authority
14 to operate his premises that way. As far as the State's
15 interests are concerned, we really don't care whether or not
16 Mr. Creech has a typewriter and from that standpoint, we would
17 not have an objection. But, I wouldn't want to speak for the
18 Sheriff.

19 MR. ROBINSON: May I be heard, Your Honor?

20 THE COURT: Yes.

21 MR. ROBINSON: Your Honor, after this transfer was
22 affected we found out that it is an overall rule of Sheriff
23 Gardner of Shoshone County that no pencils, writing materials
24 or otherwise are allowed with any of the persons he is bound
25 by order of the Court to take custody of and incarcerate save

1 and except a particular period on Saturday when they are
2 allowed in another controlled area to write two letters per
3 week. This being an overall rule of his facility, it has,
4 really, hamstrung the defense in the loss of this time for the
5 past two or three weeks in not having the ability of
6 Mr. Creech to assist us in his defense since he is a person
7 that has most of the information regarding all of this
8 involvement.

9 We have made the request, it is my understanding
10 that comment has been made; even though this Court may order it,
11 he still will not have a typewriter and paper and I do want
12 to urge the Court on this motion to make its order so that a
13 typewriter and paper are available to Mr. Creech. We have a
14 continuing need and will have right up through time of trial and
15 during the trial for him to put in writing the material facts
16 and circumstances involving his defense.

17 I might add further, Your Honor, that for the first
18 week to ten days, or almost two weeks, he was incarcerated in
19 maximum security. He has, however, gained a new status and
20 has been placed in the felony area where other inmates are
21 available; not only to talk to, but at least company.

22 The restrictions that are there at the Shoshone
23 County Jail, make it almost impossible for us to continue the
24 tape recording sessions that we, over the past three months,
25 have been able to obtain. We have over 300 hours of taped

1 confessions with the defendant and the circumstances in this
2 case change because of continued enlightenment and verification,
3 investigation. Consequently, we do need his ability to
4 communicate with us and this is the only way that he can do it.

5 I might state to the Court that I have a manual
6 machine, portable typewriter there at all times. It is not an
7 electrical typewriter, the jail facilities do not have
8 electricity in for use by the inmates. It is a manual machine,
9 there's nothing in the machine that I can see that presents a
10 possibility of developing a weapon. Many weapons were made in
11 the Ada County Jail from spoons, radio antennae, things of this
12 nature, but I do not see that there's any part of the portable
13 machine that could be considered a weapon.

14 THE COURT: What facilities do they have in the jail in
15 Shoshone County for consultation with counsel? Do they have
16 an interview room where you can --

17 MR. ROBINSON: Yes, they do, Your Honor. There are
18 two chairs with arms on them on the attorney's side and a
19 stool on the other side. The prisoner and the attorney are
20 separated by wire mesh and there is a full glass between this
21 council room and the dispatcher, or the operator of all of this
22 closed-circuit TV that they have there in the facilities.

23 You are also totally under observation of the
24 Sheriff's office personnel. I don't know whether there is
25 monitoring of the conversations there or not. I'm not

1 sophisticated enough and educated enough in the electronics
2 that that is a fact or not.

3 THE COURT: Well, I feel rather the same as Mr. Thomas.
4 I personally, of course, don't have any objection to
5 Mr. Creech having a typewriter and writing material. However,
6 I don't understand -- I have never run a jail and then been
7 faced with the problems of running a jail, maintaining security
8 and preventing manufacture of weapons and I don't propose to
9 intervene in an area where I don't really have jurisdiction.
10 I don't see how I can properly enter any order that binds the
11 Sheriff in his jurisdiction and his statutory function, without
12 at least making him a part and giving him an opportunity to
13 appear and be heard on it. I'm going to deny the motion.

14 MR. ROBINSON: May I be heard further on that, Your Honor?

15 THE COURT: Yes.

16 MR. ROBINSON: I would like the permission of the Court
17 to kindly file this motion and have Mr. Lou Gardner, the
18 Sheriff of Shoshone County, present, either at a hearing here
19 or in Wallace; I believe that we are seriously hamstrung,
20 Your Honor.

21 THE COURT: Well, I have some question about that,
22 Mr. Robinson. Mr. Creech, apparently, is turning out volumes
23 and volumes of written material and I've tried a lot of murder
24 cases and I appreciate this obviously has ramifications that
25 other cases don't have, but I don't see the need for a man to

1 sit there and solidly write for several months to advise
2 counsel of the things counsel needs to know.

3 I don't think there's been a sufficient showing for
4 the need for this, frankly.

5 MR. ROBINSON: In the alternative, Your Honor, even to be
6 provided with paper and a pencil so that he can write in
7 longhand.

8 THE COURT: Have you had any communication with people
9 up there, Mr. Thomas, on this?

10 MR. THOMAS: No, I haven't, Your Honor, not with
11 respect to this particular matter.

12 THE COURT: I can frankly see some objections to a
13 typewriter, I have no idea what an ingenious person might do
14 with the inward workings of a typewriter. I can imagine maybe
15 all kinds of weapons being made from the insides of a typewriter.

16 I might think that might be a real security problem,
17 but -- and I appreciate that a simple pencil or pen could be a
18 weapon, too, under proper circumstances, but it seems to me
19 that it's not very hard to keep track of a pencil or pen, I
20 mean, they give a person a felt-tipped pen and, then, pick it
21 up at night so they know what they did give him and they know
22 what they get back, it looks like he couldn't disassemble that
23 and take parts out without knowing it.

24 It, frankly, bothers me a little that he can't have
25 anything to write with. I don't know, why don't you inquire

1 into that. I say, I frankly don't see -- I don't have a
2 problem denying the motion for typewriter because I think
3 that might create all kinds of problems, but --

4 MR. THOMAS: I will, Your Honor, I can possibly --

5 THE COURT: A felt pen or something like that. I say,
6 I appreciate even a pen could be made into a weapon but the ease
7 of keeping track of whether it's been disassembled or anything
8 taken out of it is so easy to discover that I don't see a real
9 problem there of handling that kind of a situation.

10 But, for the typewriter, as I say, I'm going to deny
11 that motion. I feel it doesn't take too much imagination to
12 see some real problems with a typewriter.

13 MR. ROBINSON: Your Honor, may I put one other comment
14 in that regard, on the record?

15 THE COURT: Yes.

16 MR. ROBINSON: During Mr. Creech's entire incarceration
17 here in Ada County he had an electric typewriter in his cell and
18 during that period of time used it extensively, not only for our
19 aid and assistance, but also correspondence to the church groups
20 and other people that had made contact with him.

21 I do appreciate the innovation of persons
22 incarcerated and their ability to make weapons because I have
23 seen some of them right here in this jail and one of them, very
24 possibly, could have taken the life of one of the attorneys in
25 my presence and Sheriff Palmer's presence.

1 MR. THOMAS: I would like to comment, Your Honor, that
2 among the weapons made in the jail when Mr. Creech was here were
3 some that he made. I was informed by the Sheriff.

4 MR. ROBINSON: I would have no argument with that
5 comment of Counsel, Your Honor, because I know what he is saying
6 is true.

7 THE COURT: Well, it seems to me that something could be
8 able to be worked out, maybe through the Prosecuting Attorney
9 of -- up there or something. Who is the Sheriff's legal
10 advisor?

11 MR. THOMAS: I'll inquire.

12 THE COURT: It seems to me that is unduly restrictive,
13 not to allow him to have anything to write with.

14 All right, the next one that appears is a motion
15 for a pretrial conference to be held on the 3rd of October at
16 9:30 in Wallace. That would be Friday prior to commencement
17 of trial. Any objection to that?

18 MR. THOMAS: I have no objection. Mr. Remaklus was not
19 able to be here this morning, but I did confer with him about
20 the times that were suggested by Mr. Robinson. Mr. Remaklus
21 and I have -- both feel that it would be, perhaps, beneficial
22 to hold the pretrial conference at an early time. He has
23 suggested the dates of either the 9th or 11th of September, or
24 the 25th or 26th as being dates when he is available. We would
25 simply ask the Court to schedule a conference earlier than the

1 3rd of October.

2 MR. ROBINSON: If I may, Your Honor?

3 THE COURT: Yes.

4 MR. ROBINSON: Mr. Thomas and I did discuss this
5 yesterday and, perhaps, it will be beneficial to have more than
6 one pretrial conference and I'm surely willing to make myself
7 available outside of any conflicts.

8 Now, the 9th in the morning, which is next Tuesday,
9 I do have a conflict with depositions in Federal Court.

10 THE COURT: We don't need to talk about mornings, I don't
11 have any mornings open prior to --

12 MR. ROBINSON: I could make myself available in the
13 afternoon. What was the other date, Mr. Thomas?

14 MR. THOMAS: The 11th and 25th and 26th.

15 MR. ROBINSON: The 11th, Your Honor, I have a full
16 conflict and the 26th is the last day that I will be here in
17 this Valley and I have that fully scheduled in Caldwell on many
18 matters that are before that court.

19 The next day I will be leaving for Wallace and
20 be up there approximately a week to ten days prior to the
21 commencement of this trial.

22 THE COURT: Well, I would say this: I can see, perhaps,
23 some advantage in having a pretrial conference immediately
24 prior to the trial as Mr. Robinson has suggested. But, without
25 restrictions about how many others we might have also, but it

1 seems to me at that point preparation should have been done and
2 Exhibits should be pretty well prepared and, perhaps, at that
3 pretrial, Exhibits could be marked and go over that wouldn't
4 be feasible earlier, on an earlier date which does not mean
5 that we couldn't have another one earlier if there was some
6 purpose to be served by it.

7 MR. ROBINSON: I might state to the Court that the date
8 of the 9th, next Tuesday, is the day before we have agreed by
9 stipulation that all motions are to be filed.

10 THE COURT: Right.

11 MR. ROBINSON: And --

12 THE COURT: What dates do we have that you could agree
13 on now? I wasn't keeping track of those.

14 MR. ROBINSON: The only one, apparently, would be the
15 afternoon of the 9th, next Tuesday afternoon.

16 THE COURT: Well, I'd be free then, that's fine.

17 MR. ROBINSON: If the Court would name an hour, does the
18 Court have conflicts with that 3:30 motion time on Tuesday?

19 THE COURT: That is my motion time, it will be, probably
20 be, better to take the matter up -- well, do counsel have any
21 idea what you will want to talk about then and how long you need?

22 MR. THOMAS: No, Your Honor, we have nothing to present
23 on the 9th of October.

24 THE COURT: September we are talking about.

25 MR. THOMAS: I'm sorry, the 9th of September. We probably

1 would be, as the Court suggested, in a position to go over the
2 evidence and Exhibits in a better way on the 3rd of October.

3 I suggested the 9th of October on the assumption
4 that Mr. Robinson had something to bring up prior to trial.

5 Another reason we wanted to have an earlier date
6 that if it required -- with any of the matters that came up
7 required any further preparation on our part, we would like to
8 have a little lead time to do it. I have not discussed with
9 Mr. Robinson what he wanted to bring up at the pretrial
10 conference.

11 MR. ROBINSON: If it please the Court, the only one that
12 I have requested would be on the 3rd of October, on the Friday
13 preceding commencement of trial and it was Mr. Thomas'
14 suggestion we have one earlier for the benefit of Mr. Remaklus
15 and the AG's office and myself.

16 I might relate to the Court the sequence as I set
17 coming down here. The request for discovery, inspection of
18 documents and all -- and listing of names, witnesses and
19 such motion of those have already been done, but I have --
20 Mr. Thomas, isn't that the 12th that your deadline -- that you
21 set in your request?

22 MR. THOMAS: Yes.

23 MR. ROBINSON: And it appears to me that even though we
24 might be available the 9th that, possibly, all of the motions
25 should be filed and all of the discovery be made and the

1 exchange between the State and the Defense be made prior to
2 bothering the Court with a pretrial conference.

3 THE COURT: Yeah, I would be available, but I don't know
4 the point in setting one if there's nothing to take up.

5 MR. ROBINSON: So, the 9th doesn't appear as though it
6 would be fruitful and the efforts to be put out.

7 Now, I do have a conflict, several conflicts on the
8 11th and I do have several conflicts on the 26th. Those are the
9 dates that Mr. Remaklus said he was available.

10 I'm available at other times and, possibly, we
11 can defer deciding this, Your Honor, until we're through with
12 today's matters and Mr. Remaklus can be contacted and, if he's
13 even available on a Saturday morning, I would be too.

14 THE COURT: As I understand it, we have reserved
15 September 22nd to hear preliminary motions that can be heard
16 without defendant's presence?

17 MR. ROBINSON: Yes.

18 THE COURT: Wouldn't it be possible to take up any other
19 things that same day, maybe?

20 MR. THOMAS: I should think so.

21 MR. ROBINSON: Yes, sir, that's a Monday. I believe we
22 have that scheduled at 3:30.

23 THE COURT: We can have formal hearings on anything we
24 needed to and, perhaps, an informal pretrial conference the
25 same day on other matters. It seems to me, maybe, that's the

1 best time to just take up any preliminary matters we need to;
2 in addition to formal motions that are presented for hearing
3 at that time. So --

4 MR. ROBINSON: I might advise the Court --

5 THE COURT: -- now, I frankly contemplated that that
6 entire date might be taken from the motions, particularly if
7 they were evidentiary hearings on motions to suppress and things
8 like that. So, I hadn't necessarily intended to limit that
9 just to a 3:30 motion day.

10 MR. ROBINSON: I don't want to be confused nor
11 misunderstand the Court, but it's my understanding that the
12 evidentiary motions cannot be heard until we get to Wallace and
13 the defendant present.

14 THE COURT: Well, I don't know what --

15 MR. ROBINSON: All other motions can be.

16 THE COURT: -- the nature of the motions are going to
17 be.

18 MR. ROBINSON: Well, that was my understanding what the
19 stipulation, under the instruction of the Court, that we would
20 hear.

21 THE COURT: We can't hear any motions on the 22nd. That
22 would require defendant's presence, that's understood. But, I
23 don't know what motions you are contemplating making that can
24 be heard on the 22nd. I'm just thinking if they take more time
25 than 3:30, it wasn't my intent to limit you to a 3:30 time on

1 that.

2 MR. ROBINSON: Does the Court have more time on the 22nd
3 to commence, say, at 10:00 in the morning?

4 THE COURT: Well, I can make it available if you need the
5 time.

6 MR. ROBINSON: I think probably we should, Your Honor,
7 in all fairness to the Court, and before I'm through here, I
8 will advise the Court of one motion I think is particularly
9 sticky and I think it's going to take a great deal of discussion.

10 THE COURT: Well, let's say 10:00 on the 22nd.

11 MR. THOMAS: We have no problem with that, Your Honor.

12 THE COURT: Take that day for whatever we need and, then,
13 I'll grant the motion for a pretrial conference on the 3rd of
14 October at Wallace.

15 MR. ROBINSON: And for the Court's information,
16 Your Honor, in that regard I might advise the Court that during
17 that week or ten days immediately prior to that pretrial
18 conference I will have set up a Spokane psychiatrist, a
19 polygraph operator and, both, hypnotist and M.D. to administer
20 Sodium Ametol in a similar fashion that the six sessions were
21 performed during and prior to my involvement in the case by
22 the State.

23 I will -- I believe that at that time all of those
24 tests will be available to the Court and I think it will make
25 that pretrial conference a great deal more meaningful in having

1 all that work done..

2 THE COURT: Now, I'm wondering whether evidentiary
3 motions, or any motions that require the defendant's presence,
4 whether evidentiary or otherwise, would have to be heard in
5 Wallace and can be worked in that same day, on the 3rd.

6 MR. ROBINSON: Yes, I'm sure that they can, Your Honor.
7 We would be there.

8 THE COURT: We can start at 9:00 in the morning and take
9 the whole day, whatever we needed.

10 MR. ROBINSON: And with nothing else to do in Wallace,
11 we could even work Saturday.

12 THE COURT: Yeah, we sure could, unless -- all right,
13 let's just plan on those two dates, the 22nd reserved for
14 pretrial conference or any motions that don't require the
15 presence of the defendant and the 3rd of October will be
16 reserved for a pretrial conference and any motions that
17 require the presence of the defendant.

18 MR. ROBINSON: Fine, Your Honor.

19 THE COURT: All right, that motion is granted, then,
20 for the pretrial conference.

21 The next motion I have is for allowance of
22 subpoena of witnesses. Any objection to that, Mr. Thomas?

23 MR. THOMAS: Yes, Your Honor. We do have objections to
24 this and I would like to point out the specific reasons we do.

25 Section 19-3008 of the Code requires that the

1 affidavit for more than five witnesses set forth the witnesses
2 are material to the case in some way and we interpret that as
3 meaning that there should be some kind of showing that the
4 witnesses who are sought to be subpoenaed in excess of five, to
5 give material testimony. It appears to us on the face of it
6 that a number of witnesses on Mr. Robinson's witness list
7 cannot be expected to give material testimony; the two
8 clergymen who are listed there have, so far as we are aware,
9 no knowledge of this case whatever and no admissible evidence.

10 If they are to be called as expert witnesses, they
11 should be called at the defendant's expense after a show cause
12 hearing under Rule 28; which also requires that the witnesses
13 give their consent to act as expert witnesses.

14 In addition, the witness list contains the name of
15 a person named Anton Szandor LaVey who has written this book,
16 entitled "The Satanic Bible". Mr. LaVey is a strange person
17 to say the least, part of the philosophy which he espouses in
18 this book is that human sacrifices are permissible if the victim
19 is deserving of such treatment.

20 Mr. LaVey, at the very least, would add a kind of
21 sideshow aspect to the case and we can't see that his testimony
22 is relevant at all; or that he should be permitted to testify.

23 Edwin Stuart, Lou Gardner, Jon Barnes,
24 Dr. J. O. Boxall, Dr. David Weeks, Charles Horner,
25 Lieutenant Dave Segel, Dr. A. M. Peterson, Gene Elsheimer and

1 Bill Creech are not known to the State to have any firsthand
2 knowledge of the facts relating to the circumstances of this
3 case which would be admissible in evidence.

4 The State cannot see the justification for most
5 of these proposed witnesses. We believe that before they should
6 be summoned as a charge on the State, that at the very least
7 a showing of some kind should be made to the substance as to
8 what the substance of their testimony is and that it is to be
9 expected to be admissible, or material, in some way.
10 Otherwise, we think the defendant should bear the expense of
11 bringing these people here.

12 THE COURT: Mr. Robinson?

13 MR. ROBINSON: If I may, Your Honor.

14 Your Honor, since I came onto this case and my
15 papers show the first conference with Ward Hower and
16 Jim May to have been May the 31st of 1975. I assure the
17 Court that I have not, in any way, shape or form changed the
18 facts of this case. My entire time, as well as my blind
19 investigator's time, have been spent in investigation,
20 analyzing and trying to understand all of the ramifications
21 of the defense of this case. There has not been inserted into
22 the defense and proposed defense of this case any imagination,
23 if you will, of this defense counsel.

24 I'm not sure that the Court has been made aware of
25 how Bruce Robinson got into the defense of this case since it

1 commenced and there was seven, seven and a half months of the
2 representation of Mr. Creech by the court-appointed counsel,
3 Public Defender of Valley County, Mr. Ward Hower, of Mr. Creech.

4 I'd like to, at this time for the record and for the
5 Court's information, have the Bailiff take from me a letter
6 dated May the 27th, 1975 addressed to me from Mr. Ward Hower.
7 I received this letter on the 28th, the day before the
8 Federal Evidence Seminar here in Boise State University. At
9 that time I conferred with Mr. Jim May of Twin Falls and we
10 made previous -- arrangements to meet with Mr. Hower on the 31st
11 and did. After a five and a half hour discussion Mr. May and I
12 were going to take the defense of Mr. Creech as a co-counsel
13 venture.

14 It was the following week and just before I came
15 into this court that Mr. May advised me that no way could he
16 attribute the time necessary to prepare for this case until
17 sometime in November and at this point I had made comment, and
18 I was stuck with keeping my promise.

19 Consequently the Court knows what came after that.
20 So, I'd like to pause in my argument here long enough for the
21 Court to acquaint itself with the contents of this letter.

22 With the Court's permission I will photostat this
23 and make it a part of the Court's records, along with this
24 record that's being made by the Court Reporter.

25 Your Honor, I'd liken my position, or analyzed it

1 as having come aboard a set of circumstances already a part of
2 this case before my involvement; as to being on a barge
3 mid-stream in the rapids of the Salmon River, somebody
4 handing to me a tiller and saying "You are the helmsman, try
5 to turn this case around if you will." There was no way that
6 that would ever occur.

7 Possibly, by administering properly my duties as
8 an attorney I may be able to avoid some of the rocks and
9 guide it downstream into some calmer waters. I do say to the
10 Court that I feel that it is my duty not to insert imagination,
11 flamboyancies, egotism or self-interest into this case as
12 Defense Counsel.

13 I do feel that it is my duty to be a spokesman for
14 the defendant and to take all that he has stated and all that
15 he has been involved in and use those things that I am
16 apprised of by him for his defense. This is the point,
17 Your Honor, that I arrive at where I wanted to make comment
18 that I do not want to leak to the media at this point and no
19 one is in this courtroom other than our authorized staff and
20 Mr. Charles Coulter, an attorney, and I have no objection if
21 the State doesn't have, Mr. Coulter hearing these things.

22 I'm apprised by Mr. Creech, whether they are
23 facts or fiction, I do not know; that he has personally
24 dispatched from life some 106 or 107 individuals that, in
25 addition to this, he has been personally witness to some 60

1 sacrificial deaths in the Satanic Cult and has assisted in the
2 burial of many of those victims, spread over 17 different
3 temple locations in the Western United States and Southern
4 Ohio and Northern Kentucky.

5 Much of this can be discounted, or can it? I
6 don't know, Your Honor. I do know the realism exists that there
7 have been 12 bodies that were uncovered in the investigation
8 by law enforcement, I do know that that manuscript relates
9 itself to some 51 or 52 homicides; among which is a
10 Gordon Stanton contract killing in the State of Nevada; that
11 Tom Creech took law enforcement to the corpse and that the laws
12 of the State of Nevada make it a mandatory death penalty for
13 killing of one on a contract basis and the method of execution
14 is the firing squad.

15 Oregon, in the death of Billy Dean and Jane. The
16 Billy Dean in Portland, Jane in Salem are discovered bodies.
17 Indictments are down and, while represented by counsel,
18 Mr. Creech gave full statements, typed and transcribed to
19 officials from both Attorney Generals' offices, Sheriff
20 investigations out of the States of Washington, Oregon,
21 California, Nevada, Wyoming, Montana. All of these are
22 confrontations that I must take into consideration on his
23 defense.

24 Mr. Creech advises and I have no reason to
25 disbelieve him at this point, that he has been a member of the

1 Satanic Cult which, apparently, is the recognized religion of
2 the organized bikers' associations; each state having one, two
3 or three chapters of its own and in Idaho the Brother Speed and
4 Easy Riders. May I pause, Your Honor?

5 (Brief delay.)

6 MR. ROBINSON: Further involved, I mention the
7 Sundowners of Utah, the Hell's Angels, the Outlaws out of
8 Ohio, the Machakos, the Banditos, Hell's Death Riders, the
9 Ropers and many, many others all of which, according to his
10 information given to us, are more organized than the mafia
11 itself; having national council that meet in places like
12 Fort Lauderdale, Florida; Minnesota; Jean, Nevada, and other
13 places governed by a high council who gives directions.

14 Mr. Creech has professed that he has received his
15 direction from this high council for contract killings, or
16 assassinations, if you will; not only as an enforcer, but as
17 an executioner.

18 My understanding of all of our investigations that
19 once in, you don't get out alive. Our information is that
20 this also includes his own brother and his step-father who,
21 somehow became involved in the drug traffic and that these
22 bikers' organizations are deeply involved nationwide and when
23 they tried to get away from it they were "wasted".

24 Then, with the Satanic Cult as their religion, and
25 it is an established fact that I have found published in the

1 telephone directory in San Francisco the Satanic church and
2 I have made contact through this telephone number that is
3 listed, the aid and assistance of Mr. Robert Cartwright of
4 San Francisco, the immediate past president of the Trial
5 Lawyer's Association and it is real.

6 This Satanic bible is the bible of that religion.
7 In this investigation we further find that Mr. LaVey,
8 Mr. Anton Szandor LaVey, has been published in our own
9 Statesman newspaper, relating to the cattle sacrificial deaths
10 of removed sex organs, in Adams County and they have now shut
11 down most of the media, but Sheriff Heilman was my Sheriff when
12 I was Prosecutor in Owyhee County and, therefore, I am somewhat
13 tuned in and he advises that there are two other counties,
14 now, involved.

15 Mr. LaVey did make statements, apparently, to
16 one of the reporters on the Statesman what he was inquiring --
17 when he was inquired of that, yes, they do sacrifice human
18 adults.

19 Now, I -- Your Honor, I'm not manufacturing, I
20 believe that my long involvement before this Court, that this
21 Court knows something of my personality and I certainly have
22 studied this Court and I believe this Court knows that I have
23 a good healthy respect for all of the courts, whether in the
24 State of Idaho or all other States and I particularly have a
25 lot of respect for this Court.

1 I know this Court's reputation as -- on appeals,
2 that normally any case before this court is free from error
3 as much as possible and I'm not challenging and will not
4 challenge this court unnecessarily on those regards -- or in
5 those regards.

6 I'm going to be moving this Court to dispense with
7 a jury trial and this will put this Court's decisions on the
8 horns of a dilemma, although the Idaho Constitution says that
9 you can dispense with a jury trial on misdemeanors, in the
10 reverse, it doesn't say anything, but we take it to mean you
11 cannot waive a jury trial on a felony. But, the U.S.
12 Constitution says I can. If the Court would grant that motion
13 -- I --

14 THE COURT: Are you going to make an argument they are
15 analogous to the recent Supreme Court decision that says the
16 defendant has a constitutional right to have -- not have an
17 attorney and represent himself; that he has a constitutional
18 right to waive a jury?

19 MR. ROBINSON: Yes, Your Honor. But, this puts the
20 Court on the horns of a dilemma as I say, because, if the
21 Court doesn't grant that motion then, of course, appeal goes
22 on up on that question alone. If the Court would grant that
23 motion, then, the next attorney representing Mr. Creech on
24 postconviction relief is going to say, "Judge, the mere fact
25 that Robinson made that motion shows that he was inadequate"

1 and there we are.

2 Your Honor, I do guarantee you that, in spite of
3 all of the rumors, unfounded as they are, that Robinson is in
4 this to exhibit flamboyancy, to create a creature that is
5 more news worthy in order to sell his book that he will write
6 when he's all done is not correct.

7 There has been, by our Idaho State Bar Association,
8 a committee appointed whether or not Bruce Robinson is going
9 to be in violation of 5105(b) in taking any kind of a contract
10 in exclusive publication rights and I can assure the Court
11 there is no contract of that nature in existence, nor will
12 there be. I will advise this Court that the only contracts
13 that are in existence are containing general fee contract for
14 the violation of civil rights in the Federal action that has
15 been assigned with the assignment of Mr. Creech's portion of
16 those proceeds to the defense fund if, in fact, there will be
17 any.

18 Now, in addition to that, I have filed here in
19 Ada County a general power of attorney and I can assure the
20 Court at this date that there has been nothing that has been
21 executed under that general power of attorney, nor will there
22 be. It is there so that I may sign for Mr. Creech on those
23 things because of the distance and spread of his incarceration
24 and my office.

25 I will not stand here and say to the Court that

1 when this all through years hence that Bruce Robinson will not
2 cause a book to be published as anyone has a right to publish
3 anything that they may come in contact with regarding this
4 Creech case.

5 I think the Court is aware of some of those that
6 professed that they are going to make a publication. Now, let
7 me then again address myself back to this motion.

8 There have been no funds that have come to
9 Bruce Robinson, although he is recognized as counsel of record
10 as a retained counsel. All of the investigation and my
11 involvement over the past three months in expenditure of
12 over \$7,000 has been from my own pocket and the further
13 involvement of Mr. Robinson in this case will come from a
14 refinancing of my home, which has heretofore been an interest
15 free mortgage and I, myself, retained counsel in this matter
16 because I am an attorney.

17 Mr. Creech advised -- his previous counsel called
18 on him, in seven and a half months, four times for a period of
19 ten minutes each and I believe the record shows other comments
20 Mr. Creech had made in that regard when he applied to this
21 court for change of counsel.

22 I will not insert myself into this case outside
23 of that which was there before I got into it. I don't know
24 that --

25 THE COURT: Maybe we'd better take up this other case.

1 I'm going to take a recess, I understand yours won't take too
2 long, will it, Mr. Coulter?

3 MR. COULTER: I would guess probably 30, 40 minutes at
4 the most.

5 THE COURT: I'll continue the Creech matter and take up
6 State versus Corraza.

7 (Recess taken.)

8 THE COURT: All right, we'll proceed, then.

9 MR. ROBINSON: May I continue, Your Honor?

10 THE COURT: Yes.

11 MR. ROBINSON: Where I left off, Your Honor, was in
12 describing the assertions by the defendant regarding these
13 biker organizations and part of it which I have verified to
14 and including with Dr. F. LaMarr Heyrend, a psychiatrist in
15 Boise of probabilities.

16 The syndrome that seems to be involved in the
17 non-working biker members that, for years, they have picked
18 up young ladies escaping from the parental guidance, mad in
19 their youth at society controlled by parents, out hitchhiking
20 and in such places like -- even to Haight Ashbury and they
21 guide them into communes, string them out on drug habits of
22 \$150, \$200 a day and, then, put them on the streets as
23 prostitutes and when they get out of line they physically
24 beat them the first time and the second time they are the
25 sacrificial victims.

1 The assertions of Tom Creech are that there is a
2 nationwide trucking firm in Denver, Colorado known as
3 ACON owned and operated by one Peter Simons and Glen Richards;
4 Glen Richards being also involved in the Richard Finance and
5 Mortgage Company, Salt Lake City, Utah, that launders and
6 washes money; Peter Simons being a 24-year old multimillionaire
7 of Jean, Nevada, who has his own airplanes, airstrips at
8 Jean, Nevada, and Dallas, where the traffic flow of drugs is
9 introduced.

10 These things I have verified with counsel in
11 Las Vegas and Los Angeles to know the true existence of this
12 man to and including the Attorney General's office of the
13 State of Nevada who, I am apprised, are dealing under their
14 legislative enactment for a new state -- for the Nevada State
15 Penitentiary at Jean, Nevada, purchasing the land from one
16 Peter Simons and, possible, would even be the low contract
17 bidder.

18 The involvement includes and, would under the
19 testimony of Thomas Eugene Creech, involve Peter Simons and
20 letting the contract on one Gordon Stanton and others.

21 The assertions of Thomas Creech that were all
22 present in this case prior to my involvement was that he was
23 on his way to Denver, Colorado when he was apprehended at
24 Glenns Ferry, Idaho, to fulfill a contract on then
25 Senator-elect Hart, now Senator, and these assertions include

1 Senator Hart's involvement in drug traffic that Thomas Creech
2 asserts that he has been present at, during the going down
3 of these drug transactions and involvement in the Satanic Cult.

4 In addition to that his assertions prior to my
5 involvement that Governor Gilligan of Ohio and former
6 Governor Rhodes of Ohio are also involved in this same drug
7 traffic and the Satanic Cult.

8 Now, I assure the Court that I am not going to
9 lend myself to irresponsible testimony without there being,
10 in my estimation, some total verification of probability.

11 If these assertions are true, they do spell out a
12 great deal of influence on the mental attitude and mind of
13 one Thomas Eugene Creech, the defendant in this case and my
14 discussions with Dr. Heyrend of last evening and in advising
15 him of my attempting to go through and ascertain whether or
16 not we are being told the truth or not. We discussed at length
17 the drug tolerance of the defendant that has been related to
18 in his past medical history in Lima State Hospital in Ohio in
19 the total work-up at General Hospital in Los Angeles and also
20 his psychiatric evaluation at the Oregon State Hospital,
21 Salem, prior to its evaluation here.

22 In that discussion we related to, in some six
23 conferences, consultations, investigative measures that were
24 taken and putting the defendant under Sodium Ametol,
25 hypnotic situations and polygraph and, as to whether or not

1 the full truth was ascertainable from that type of
2 investigation. I am advised that it would not be totally
3 dependable, but it has been suggested by Dr. Heyrend that a
4 drug that is not on the market and hard to obtain, only from the
5 manufacturer, that he would be willing to check out the drug
6 known as Ridene, when administered puts a person to sleep and
7 then, by the introduction of another medically supervised and
8 induced drug, awakened and not in control. Dr. Heyrend did
9 say that there is certain risk and I'm not fully apprised at
10 this point and I believe possibly before the Court would approve
11 such a measure that this Court would want to hear some very
12 specific testimony in that regard from the experts that can give
13 it to us.

14 I truly feel in this case, Your Honor, that the
15 factual circumstances, as I find it involving the two homicides
16 in the State of Idaho, that they are second degree in the heat
17 of passion and do not measure and meet the standard of first
18 degree and the State has demanded a first degree and are
19 proceeding on that basis.

20 It is my understanding that there has been an
21 offer since early January or, possibly December, of 1974 with
22 the previous counsel and Mr. Creech to plead guilty to second
23 degree murder which has never been acceptable; at this point I
24 am not authorizing either way to make a plea in either direction.
25 I would have to have totally, fuller consultation.

1 In the investigation that we have conducted, we
2 have attempted to do it with all of our own experience and
3 know-how, sceptism to determine whether or not Satan himself
4 is real and if not real we return and ask why is there a God and
5 Dr. Heyrend, when asked these questions relates that it could
6 be man's imagination or invention or creation and I frankly
7 cannot represent to this Court the truth of those matters.

8 I know I believe in that God and I'm proceeding
9 on that basis now with the defendant, a professed member and
10 having been a member of the Satanic Cult for years, according to
11 his assertions, the testimony of those that have been closest
12 to him during his incarceration whose testimony will show on so
13 many occasions his "freaking out" his professing to be back
14 into the clutches of Satan and totally influenced by the impact
15 that this so-called religion has on his behavior and the attempt
16 to determine fact or fiction of the "freaking out" episodes which
17 have not only occurred here, they've occurred in Valley County
18 and still occurring in Shoshone.

19 I cannot stand here and represent to this Court
20 that I have the answers to all of this confrontation. I will
21 tell the Court that the assertions of the defendant are that
22 aside from his obligations imposed upon him by orders of
23 council to take the life of several people, I find his
24 assertions also that he ventured on his own, declaring himself
25 judge, jury and executioner, professing that he never killed a

1 person that didn't deserve it and he has declared war on drug
2 pushers and forcible rapists and likens himself in that regard
3 to prevent drugs from being introduced on high school campuses
4 and junior high schools; likens himself unto a Sergeant York of
5 World War I, and Audy Murphy of World War II who were adept at
6 killing, some we decorate and others in society to be executed.

7 His self-declared war, whether it is real or
8 imaginary, I do not know, but I must, in clear conscience,
9 assert to the Court that I feel that it is my duty to represent
10 the defendant's points of view and not invented points of view
11 of this counsel. Dr. Heyrend says that he's never met a man
12 possessed and when one professes they are the electric -- the
13 -- I'm sorry, the therapy of shock treatment through the
14 electrical apparatus administered early in the morning brings
15 them out of it pretty well by afternoon.

16 I have read extensively, not only the Catholic
17 church's position published in our newspapers as to whether or
18 not there is or is not a Satan and the ceremonies of exorcism
19 and I have talked extensively with the Bishop of the Catholic
20 church here in Boise. I did, in this regard and I find that
21 their beliefs are so real that the reason the Catholic Priests
22 do not perform this exorcism ceremony is because they do not
23 feel themselves pure enough and went into the -- they are
24 fearful of transference of those demons of the person being
25 exorcised to the Priest himself.

1 Now, in my estimation, if these matters are
2 incorporated within the defense of this case I anticipate that
3 I will be put to offers of proof to His Honor prior to any
4 presentation to any jury, if any, because I too am interested
5 in keeping the record as free and clear of error as I'm sure
6 that the State is and His Honor is. I intend to again move
7 this Court for the sake of economy and I do urge the Court and
8 will be urging this Court to dispense with the jury in this
9 case. I feel that, as a technical decision to be made, based
10 upon the facts as to whether or not the killing of
11 Bradford and Arnold were first or second degree and I feel that
12 this Court is particularly equipped to handle that legal
13 decision based upon those facts.

14 If that is granted and we can find courtroom space
15 in Boise, Idaho, I do not feel that the publicity heretofore
16 has been a matter of mistrial of this case in Valley County,
17 would affect the trying of this case and economically it would
18 be more feasible for the State and for the defense because all
19 of the witnesses are -- important witnesses are located here
20 in Ada County, or nearby.

21 THE COURT: Well, I don't need to argue that point,
22 Mr. Robinson, if we ever reach the point in this case where it's
23 tried to the Court we wouldn't have to try it in Wallace, I
24 can guarantee that.

25 MR. ROBINSON: All right, sir, I won't belabor that

1 point.

2 But, I wanted the Court to anticipate, and I want
3 it also by making these statements to the Court in regards to
4 this motion for the Court to approve the expense of the
5 witnesses that are needed and necessary to be acutely aware of
6 what we're faced with in representing the defendant in this
7 matter. I do not feel that in this representation of the
8 defendant that this is my problem. My feeling is that this is
9 society's problem, the State's problem and this Court's problem.

10 I intend to conduct myself, as this Court knows
11 that I will, in the manner that's always acceptable. I would
12 want to allay, as much as possible, any of the false rumors
13 that possibly this Court hears on occasion and I know I too,
14 of an attempt to display, spectacularize this case of the State
15 versus Creech.

16 I assure the Court the most important element to
17 me in this case is to be responsible counsel and to follow those
18 maxims of law that allow the defendant a fair trial as unbiased
19 and unprejudiced as it can be. I urge the Court to grant the
20 motion that we have aid for the allowance of those witnesses
21 as being -- to be at the expense of the State and I would add
22 only one other further thing, Your Honor; that in my discussion
23 with Mr. Remaklus about this being a heavy financial burden on
24 Valley County, that the machinery has already been set in motion,
25 possibly to introduce a bill to the legislature to help defray

1 the expense for those few residents of Valley County and spread
2 the cost of this kind of case over the entire State of Idaho.

3 I can't guess in the future as to how that would
4 be accepted, but, basically, I feel, Your Honor, I have approached
5 the Court to allow the expenses of these witnesses that are, in
6 my estimation, all absolutely necessary. I could go down the
7 list and tell the Court on each individual why I feel that they
8 are necessary for testimony in the defense of this case.

9 MR. THOMAS: Your Honor?

10 THE COURT: Let me get a few points that probably can't
11 be in controversy out of the way first before we get down and
12 find out what we're really arguing about.

13 Number one, Mr. Remaklus sets down, I don't know,
14 did you bring these in?

15 MR. THOMAS: Yes, Your Honor, a subpoena --

16 THE COURT: A handful of subpoenas for the State. I
17 didn't go through all those in detail, but I would guess there
18 are, maybe, some overlapping. I would guess maybe Carol Spaulding
19 is probably subpoenaed by the State, I would guess, probably
20 Dr. Heyrend is subpoenaed by the State. I don't see any
21 purpose being served by two subpoenas on some of those
22 individuals if they are going to be there. I think they are
23 for the purpose of both parties if they are available. I think
24 they can be called by any party that wants to call them.

25 MR. ROBINSON: May I be heard very briefly, Your Honor?

1 I had previously advised, in chambers, His Honor
2 that more than likely the defense, and this has been months,
3 six weeks or so ago, that the defense in this case would more
4 than likely be a total full disclosure and, yet, we have the
5 brief of the State to introduce evidence of out-of-state
6 homicides involvement.

7 Now, the way I see this matter is that I have a duty
8 to contain the State's case to all of the legalities, even though
9 it may be my intent to fully disclose everything; including
10 out-of-state involvement on the defense. I feel that I am
11 pushed by the duty to contain the State's evidence in its case
12 in chief and, therefore, there will be many, many questions
13 asked particular witnesses on the cross-examination of the
14 presentation of the State's that I must contain but, later in
15 the presentation of the defense case they will be asked to
16 expound in much greater detail.

17 I don't know that that makes sense to the Court and
18 I'm not asking the Court right now to absolutely agree with that
19 premise, but I wanted the Court to have my thinking in regards
20 to the subpoenas and that is the reason that they have been
21 done in this manner on the defense's part.

22 THE COURT: Well, have you gone over the list?

23 Can you tell me which ones are duplicated the State
24 is going to subpoena only the two with -- well, three,
25 Dr. Heyrend and Spaulding, at least, I saw in the State's list.

1 There may be others, Estess, Estess is in -- maybe I'd better
2 go through those.

3 MR. THOMAS: Well, Lynskey would be on our list.

4 THE COURT: Lynskey is on your list? I'm right on the
5 others, am I not, Palmer is on your list?

6 MR. THOMAS: Palmer.

7 THE COURT: Heyrend?

8 MR. THOMAS: Yes, I think it could be assumed that
9 Dr. Estess is on our list also.

10 THE COURT: Yes, I've seen him. I went over and saw it.

11 MR. THOMAS: Mr. Mason is on our list, Carol Spaulding.
12 I believe that those are the only ones the Court would have.

13 THE COURT: Well, I can't see any reason why, as to those
14 five, if they are going to be subpoenaed by the State they
15 can't be subpoenaed by the defendant also.

16 MR. THOMAS: We don't object to those witnesses being
17 on the defendant's list.

18 THE COURT: I don't -- probably to your advantage not
19 even to have them count against your five and, then, I
20 understand you get five free ones without showing anything.
21 Mr. Robinson, were you intending to use those five for other
22 witnesses than those listed on this list?

23 MR. ROBINSON: Yes, Your Honor.

24 THE COURT: I was going to say, pick five out of here
25 if you want, without any showing being required; other than

1 those that the State has subpoenaed. I don't see that you have
2 to worry about those because I'll issue those subpoenas.

3 MR. ROBINSON: At the risk of usurping the Court's rights
4 of levity, I don't intend to get too much that way, I would,
5 probably, pick the most expensive ones, Your Honor.

6 THE COURT: But, these are going to be above and beyond
7 the five that the Statute allows; is that what you are saying?

8 MR. ROBINSON: Yes.

9 THE COURT: All right, there's two problems, Mr. Thomas
10 has alluded to one already. I think the out-of-state witnesses
11 are in a different category than the in-state witnesses. As
12 far as procedurally they are. I think we'd better address
13 ourselves to that point as well as to whether the showing is
14 requisite for either of those procedures, in-state or
15 out-of-state and I'll hear anything you want to present on
16 that, Mr. Thomas.

17 MR. THOMAS: Well, Your Honor, our principal point is
18 that for any witnesses that the -- certainly above the five
19 and we don't yet have the five selected, but there has to be
20 some showing about materiality. What Mr. Robinson has addressed
21 himself to is not a showing of materiality at all. I don't
22 understand how all of these things that Mr. Creech has spun out
23 over the months that he's been writing and telling people that
24 his alleged involvements in other crimes has anything to do
25 with this case.

1 We have moved, or indicated to the Court at least,
2 that we intend to introduce some evidence of other crimes on
3 the issue of premeditation, but that evidence will go to
4 premeditation, motive, will be limited in its purpose and it
5 still doesn't open the door to the bringing in of a whole
6 parade of witnesses to embellish, to elaborate the fantasy
7 Mr. Creech is creating.

8 We have investigated all of these things, or at
9 least a great many of them, and find that most of them are
10 uncorroborated. So, I think that Mr. Robinson and the defendant
11 are not entitled to any out-of-state witnesses, except on a
12 showing that their testimony would be material and this man,
13 Anton LaVey, has no knowledge at all of this case. All that
14 he has to contribute is this bizarre philosophy; which he has
15 set out in the Satanic bible which include approval of human
16 sacrifices; if Mr. LaVey and his followers decide that the
17 victim deserves it.

18 None of these things seem to me and to the
19 State to be relevant or material to this case of murder and no
20 showing has been made.

21 There should be no allowance of these fees or costs
22 for bringing in of persons out of state for this purpose.

23 As far as the in-state witnesses go, above the five
24 people named, or allowed by the Statute, I think the same kind
25 of showing has to be made; that their testimony would tend to

1 be material in some way and none of the things that Mr. Robinson
2 has described appear to be material.

3 The kind of information Mr. Robinson describes
4 sounds more like a runaway Grand Jury investigation into
5 theological and antilogical principles than a trial for two
6 counts of murder. That's what is involved here and the second
7 degree murder defense that we propose to rebut by evidence of
8 other crimes restricts itself in relation to those other crimes
9 only to those kinds of things that tend to show motive,
10 identity, premeditation and malice.

11 That is our position, Your Honor. We do not believe
12 that the defendant is entitled to bring out-of-state witnesses
13 without some kind of showing about the materiality and is not
14 entitled to have more than five witnesses at State expense
15 without the same kind of showing.

16 MR. ROBINSON: If it please the Court, there will be an
17 assertion, or it is an assertion of the defendant that
18 Anton Szandor LaVey of San Francisco did authorize -- of the
19 Satanic bible, he was personally in the presence of, with his
20 hood off, in sacrificial regalia of the high priest in the
21 presence of sacrificial victims with instructions being given
22 by this man for the disposal of those remains.

23 He asserts --

24 THE COURT: When you say "this man", what man are you
25 talking about?

1 MR. ROBINSON: Anton Szandor LaVey, the high priest, the
2 "Black Pope" as he calls himself in the bible and the defendant
3 also asserts that even though he can't positively identify
4 LaVey as being the high priest that wielded the knife to
5 sacrifice the victim, that he's satisfied and certain in his own
6 mind that it was LaVey.

7 Now, there still remains in this case the defense of
8 mental defects and, certainly, this is a decision to be reached
9 by the jury, or if the Court tries him, by the Court. I don't
10 feel equipped to make the decision although I have spent three
11 months in investigation and interrogation as to whether or not
12 the defendant does or does not have an acceptable mental defect
13 under -- and in accordance with the law. I just don't know.

14 But, I certainly must go all the way to attempt to
15 show this Court and the jury, if you will, that this kind of
16 involvement by a human being certainly doesn't lend itself to
17 saying he is a thrill killer and sane in all regards for all
18 purposes. The motivation aspect of the case, and the right of
19 the defendant to expose his entire personality and involvement
20 in the defense of his case for consideration by that jury and
21 in order to do that I have not suggested any unnecessary
22 witness.

23 Your Honor, for the record, and I have alluded to
24 there being a manuscript and I represent to the Court that this
25 is not the handwritten, but it is a typewritten manuscript and

1 I have a photocopy that I offer to the Court for the Court's
2 acquaintanceship. The particular manuscript is in the hands of
3 many, many; including the media, and I offer at this time to
4 make it a matter of record to this hearing and for the Court's
5 information. As a matter of fact I would ask that the same be
6 marked, Your Honor.

7 THE COURT: Do you have any objection, Mr. Thomas?

8 I take it you are offering this in support of the
9 motion; is that what you are doing, Mr. Robinson?

10 MR. ROBINSON: Yes, Your Honor, not as evidence but only
11 to acquaint the Court with these materials that are out here
12 running around uncontrolled and, certainly, the Court in making
13 its ruling should not be kept in the dark as to the existence
14 and contents of this particular writing.

15 MR. THOMAS: Well, we don't object to the Court
16 considering the manuscript and contents of it in connection with
17 this motion. We certainly do not admit that this is, in any
18 way, relevant even to the motion or to any issue in the case.

19 THE COURT: Before we formalize this, I would like to
20 caution counsel about one thing. I think, under the publicity
21 order I've entered, anything that becomes a matter of record
22 isn't subject to that order and I don't know that you want to
23 make this a matter of record, Mr. Robinson.

24 MR. ROBINSON: You are absolutely correct, Your Honor,
25 and I hurriedly adhere to the Court's thoughts in that regard and

1 withdraw the offer of placing it at this time as a matter of
2 record.

3 I merely offer to His Honor in the same manner as
4 a brief would be offered. Briefs aren't a matter of record.

5 I would rather this come to the Court as not a matter
6 of record in this case, but rather for the Court's information
7 only in assisting both the State's counsel and defense counsel
8 and the Court to have a greater understanding of what transpired
9 and came down prior to my becoming involved in the matter on
10 May the 31st of 1975.

11 THE COURT: Why don't you return this to Mr. Robinson
12 for the time being. We might have it submitted in another
13 manner.

14 MR. ROBINSON: Thank you very much, Your Honor, for
15 those observations.

16 MR. THOMAS: I would simply like to state, Your Honor,
17 in connection with this document, if it does come back in, or
18 it's given to Your Honor, that we certainly don't agree that
19 it states accurately any facts.

20 THE COURT: I assume, if it comes before the Court it
21 will come before the Court as an attachment to a brief or
22 Exhibits to a brief and I don't understand this is any role that
23 requires opposing counsel to agree with anything the other
24 counsel says in his brief.

25 MR. THOMAS: I would agree with that.

1 MR. ROBINSON: I would agree with that, yes, Your Honor.

2 If I might, Your Honor, may I make one other
3 comment in regard to this out-of-state witnesses?

4 THE COURT: Yes.

5 MR. ROBINSON: It seems to me, if the State is still
6 asserting that motion on the brief that they have submitted
7 that I am briefing in opposition to -- on the exception of
8 modus operandi that the out-of-state witnesses and out-of-state
9 involvement, then, would have to be gone into by out-of-state
10 witnesses to show the distinction between the type of homicides
11 outside of the state and those two we're concerned with mostly
12 in the State of Idaho.

13 Your Honor, could I address the Court further on
14 that matter, be very short.

15 THE COURT: Yes.

16 MR. ROBINSON: We do have, not only pretrial conferences,
17 but other matters set up for further consideration by the
18 Court. If the Court wants to reserve its decision, I would not
19 see that it would be prejudicial, either way, these subpoenas
20 have already gone out and have been delivered by the
21 representative Sheriffs and served on those parties that were
22 going to be subpoenaed to have time to arrange their schedules.
23 The Court's decision would not interfere in any way, I don't
24 think, in that regard. I think it merely -- decision to be made
25 by the Court regarding the economics so, if the Court desires

1 to reserve its decision we have no objections.

2 THE COURT: Well, I think there's a few more problems
3 involved and one is the procedure to make the subpoenas effective
4 and I find, in reviewing the Statutes, that both parties have
5 somewhat related problems and similar problems in that regard.

6 I'll advise you further, Mr. Thomas, that I don't
7 intend to sign these subpoenas in the form they've been
8 presented to me because I don't see that they conform with the
9 Statute. In other words, there's nothing in the Statute that
10 says the District Court has to issue subpoenas. There is a
11 Statute that requires, and that is Section 19-3009 that if a
12 person, a witness, is required to attend outside of the county
13 in which he resides, or is served with a subpoena by either
14 party he isn't required to obey that subpoena unless the Judge
15 of the court in which the offense is triable, or a Justice of
16 the Supreme Court, or a Probate Judge, upon an affidavit of the
17 Prosecuting Attorney or Prosecutor or of the defendant or his
18 counsel, stating that he believes the evidence of the witness is
19 material, and his attendance at the examination or trial
20 necessary, shall endorse on the subpoena an order for the
21 attendance of the witness.

22 Now, I haven't, at least I haven't examined all
23 these, but I don't know that there's such an affidavit furnished
24 by the Prosecutor in support of any endorsement by the Court on
25 these subpoenas.

1 MR. THOMAS: No affidavit has been furnished.

2 THE COURT: So, I don't intend to make any such
3 endorsement on the forms of subpoena unless that affidavit is
4 submitted.

5 So, I'm simply going to return them to you,
6 Mr. Thomas, without any endorsement or signature on my part.
7 That will likewise apply -- this is why I commented originally
8 that we've got to distinguish rather sharply between whether --
9 I said in state and out of state, it even goes beyond that,
10 whether they are witnesses from the county in which the case is
11 to be tried or whether they are witnesses that reside outside
12 of that county and have to travel from their county of their
13 residence.

14 As to both parties that problem on in-state witnesses
15 is identical. You are both going to have to submit --
16 Mr. Robinson does have -- his motion is supported by an
17 affidavit. Now, the next problem I don't suppose you've got
18 any out-of-state witnesses, is that right, Mr. Thomas?

19 MR. THOMAS: Yes, we will have out-of-state witnesses.

20 THE COURT: All right, you will have? Then, you are
21 both in the same situation with that on an out-of-state
22 witness. I understand you can't just simply issue a subpoena.
23 We have a statute for the Uniform Act to secure attendance of
24 a witness; which is 19-3005, which proscribes a very detailed
25 and specific procedure for obtaining witnesses from another

1 state and this is sort of a time consuming process because
2 they have to actually appear in that other state before a
3 Judge to be advised of certain rights, be afforded their
4 expenses and that procedure all has to be taken under the
5 Uniform Act to secure attendance of out-of-state witnesses.
6 Unless you have an arrangement that witnesses are willing to
7 just come voluntarily, there's certainly no assurance that
8 any subpoena will be obeyed unless that Statute is complied
9 with and followed.

10 Then, of course, we have the additional problem
11 that we've been arguing about here; which is the problem of
12 the limitation on the defendant to secure witnesses at county
13 expense beyond five and showing necessity to justify those
14 witnesses.

15 Now, I would suggest as a practical matter there
16 should be no problem with the witnesses that are also being
17 subpoenaed by the State because I don't think they should have
18 to be charged to the defendant since they've been subpoenaed
19 by the State anyway and I would just have no objection to
20 issuing even duplicate subpoenas if counsel feel that is
21 necessary to protect the record.

22 I also feel that the Court isn't entitled upon -- to
23 decide or exercise any discretion as to five witnesses the
24 defendant wishes to call when he wants to take five out of this
25 list or some other list. However, I'm prepared to rule right

1 at this time that, as to -- except for witnesses that are
2 going to be subpoenaed by the State and that you both want to
3 subpoena and except for the five the Statute allows without
4 any showing, I don't feel there's been a sufficient showing
5 of materiality as to the remaining witnesses for me to act
6 under Section 19-3008 because I think that requires more than
7 a showing of the bare conclusion that it's material. I think
8 it requires a showing so that the Court can make a finding
9 that they are material and I don't think the Court can make
10 that kind of finding based on just conclusions. I think the
11 Court would have to be advised, not in great detail, I don't
12 think we have to have a transcript of their evidence, but at
13 least as to general -- the general nature and tenor of what
14 their testimony is going to be so that the Court could make an
15 informed ruling on whether the Court feels that evidence will
16 be material.

17 Now, in this regard I have some thoughts that are
18 going to cut both ways as to both parties, I'll be frank to
19 say. I can see from the detailed outline that Mr. Robinson
20 has given us that both parties, both the State and its
21 intended offer of evidence of other offenses to prove a motive
22 on premeditation, intent and for Mr. Robinson's purpose in
23 rebuttal of the first degree, if we were involved with a
24 Satanic Cult killing of these two victims, Bradford and Arnold,
25 or if we were involved with a contract killing in Bradford and

1 Arnold, then we might very well, for the purpose of the
2 State wants and also the purpose that Mr. Robinson wants,
3 be forced to get into these alleged incidents in other states.

4 But, from what's been presented here, I haven't
5 heard a thing that tells me that Bradford and Arnold's killing
6 is similar or related in any way to these other killings. It
7 isn't an execution-type killing or contract as far as I've been
8 advised, or received any information it isn't an execution of
9 -- pursuant to a sacrifice under the Satanic Cult and, frankly,
10 see -- have a great deal of difficulty, either from the State's
11 position in which they want to use this evidence or from the
12 defendant's position to see how this is relevant for
13 materiality in any way.

14 Now, I appreciate the defense has given the
15 requisite notice and it's an issue in the case, the mental
16 disease and defect, but I certainly don't intend to inject into
17 this trial novel theories of mental disease and defect. I
18 think our mental disease and defect defense has been defined
19 by our Supreme Court. In fact, I -- the last murder case I
20 tried had that disease and defect defense raised, my
21 instructions were sustained on that point, they were challenged
22 and I intend to give exactly the same instructions from this
23 case and I think those instructions and that case that approved
24 those instructions limits the area of how you prove a mental
25 disease and defect. I don't think it can -- I think it has to

1 be a mental disease and defect that falls within those
2 definitions.

3 I don't think this business of whether Satan is
4 real or not or whether people can be possessed of demons or --
5 falls within that definition of mental disease and defect.

6 Now, if Counsel have some other kind of defense that
7 is recognized in the law, I understand perhaps California has
8 adopted an irresistible impulse. Now, perhaps if you had a
9 theory that a demon causes an irresistible impulse, but I'm
10 not sure whether Idaho has ever adopted that theory. I don't
11 know that they have, maybe they have. All I'm suggesting to
12 Counsel, as far as I'm concerned, unless you can bring -- this
13 case has got enough problems in it without trying to do a
14 lot of novel things and I don't intend to do very many novel
15 things in this case. I intend to restrict it on both sides to
16 recognized rules of law and recognized defenses and rule on
17 relevancy and materiality on that basis.

18 With those thoughts in mind, I see some real
19 problems of showing that witnesses that defense, or the
20 State intends to put on to prove some of these other offenses
21 and these matters that Mr. Robinson has alluded to, are
22 relevant and material.

23 Now, I don't intend to limit either side in
24 presenting -- making their record on this case just as
25 extensive and full as they want. But, I would hesitate to

1 rule and wouldn't intend to rule that a witness would actually
2 have to be called to make that record. As far as I
3 understand the method of making an offer of proof that is
4 one recognized way, of course, to have the witness there and
5 to make the offer of proof in the form of questions and
6 answers. Of course, the other well-recognized way is to
7 simply have Counsel state what that witness would prove if he
8 were called and allowed to testify. To me, dealing with the
9 kind of issue we're dealing with here, that would be the more
10 feasible and practical way of making an offer of proof in this
11 case.

12 As to those issues as to which there's a serious
13 question as to whether they are relevant and material, I
14 wouldn't be inclined to have a witness brought in from
15 San Francisco or long distances just to make an offer of
16 proof when I think the record can be preserved and made for
17 purposes of appellate review as fully and completely in some
18 other method without incurring that expense.

19 So, for present purposes, I'm going to deny the
20 defendant's motion except, as I say, for those witnesses who
21 are going to be subpoenaed by the State and I don't intend to
22 charge the five that the Statute allows without any showing
23 and any others of this list that Counsel wants to use within
24 that five that require a showing. I, of course, wouldn't
25 require anything further, but as to all other witnesses, I

1 would expect a more detailed showing to show the materiality
2 and make a basis for the Court to make an actual finding of
3 fact as to the materiality of this proposed evidence.

4 It seems to me this could be done by affidavit.
5 It doesn't have to be done by having the witness here to
6 testify. So, I'm going to deny the defendant's motion and
7 they weren't offered for the record, but reject the tendered
8 subpoenas of the State until the showing required by the
9 Statute and whether it's 19-3005 for the Uniform Act to secure
10 attendance of out-of-state witnesses; or 3008 for subpoenaing
11 witnesses generally or 3009 which requires the endorsement
12 of the Court on witnesses that are required to appear out of
13 the county of their residence.

14 I make these rulings without the -- any
15 prejudice to renewing them upon a proper showing and upon
16 submitting appropriate documents to follow the procedure
17 outlined by those Statutes.

18 MR. ROBINSON: May I inquire of a matter, Your Honor?

19 THE COURT: Yes.

20 MR. ROBINSON: Since this case is unusual in respect
21 to the fact that it was transferred because of the prejudice
22 from Valley County to another county, would the Court feel
23 that possibly the provisions of the showing for witnesses
24 out of county are an exception to the provision that has been
25 made of all the requirement showing for witnesses, then, to

1 be another county?

2 THE COURT: Well, I think I see your problem but I
3 feel that intent and purpose of this statute was referring to
4 the county of trial and, so, I think out of county means that
5 out of Shoshone County as far as I'm concerned, they are
6 out of county if they are not residents of Shoshone County.

7 It's obvious, looking at the practical problems
8 of a witness having to leave his home and witnesses in
9 Valley County are going to be leaving their residence just
10 as much as witnesses in Ada County to go to Shoshone County.
11 The only witnesses that wouldn't apply to, as far as I'm
12 concerned, are residents in Shoshone County.

13 Now, on the other motion --

14 MR. THOMAS: Excuse me, Your Honor, may I ask another
15 question?

16 THE COURT: Yes.

17 MR. THOMAS: For my clarification, are the
18 out-of-state witnesses on defendant's list includable
19 within the five witnesses above those witnesses the State has
20 subpoenaed?

21 THE COURT: No, I think the out-of-state witnesses
22 described under 19-3009 -- I mean 19-3005, the Uniform Act,
23 to secure out-of-state witnesses and I think for out-of-state
24 witnesses that Act has to be complied with in all respects
25 no matter whether there's one or five. Even for one witness

1 that's a separate Act and I think out-of-state witnesses are
2 in a separate category completely, aren't even covered by
3 -- perhaps 3008 makes an additional requirement, but it
4 certainly doesn't eliminate the requirements of 3005.

5 MR. ROBINSON: Your Honor, on the out of state, you
6 are saying if they are served out of state, but if they are
7 served in the confines of the State of Idaho --

8 THE COURT: Yeah, if they can be served in the state,
9 why, then, they are in state, I would think.

10 On the Motion for Production of Handwriting
11 Exemplars, I have already given Counsel one caveat, I say
12 the Ada County Prosecutor uses this quite frequently, both
13 on fingerprints and handwriting. I've never found any
14 practical way to enforce such an order if the defendant just
15 doesn't want to comply with it. If he simply folds his arms
16 and says, "I'm not going to write", the only -- I suppose
17 where the Court has issued an order you can hold him in
18 contempt, but I've found by unpleasant experience in some
19 occasions that a defendant is facing a rather severe and
20 lengthy sentence, or severe sentence, otherwise isn't very
21 much impressed by a threat of contempt. In fact, I've had
22 them sit there and laugh at me when I talk about contempt
23 when they've been sentenced to the Penitentiary for 30 years
24 or so, or thereabouts. So, I don't find that to be a very
25 effective tool when the man's facing the death penalty or a

1 long prison sentence.

2 So, you have that problem to confront, Mr. Thomas,
3 and I don't know how you solve that one. But, I believe you'd
4 prefer to -- even though I understand there is case authority
5 for it, I would like, perhaps, to show on the record by
6 Section 19-625; which isn't directly in point, but should apply
7 a fortiori to a case such as we have here, perhaps just to
8 supplement the motion and I would say for the record that upon
9 it being supplemented by that showing I would grant the motion
10 for whatever it is worth.

11 I appreciate this is a matter that should be resolved
12 as soon as we can, if Counsel wants to come in with a
13 supplemental showing in support of the motions, in fact, I wouldn't
14 even -- to cut down the red tape I wouldn't require in my
15 ruling that the motions be made orally. Where a motion is
16 in the record, that motion would stand. I would just make my
17 present rulings without prejudice to renewing the motion on the
18 existing motion supported by a supplemental showing.

19 In other words, I wouldn't require you, Mr. Robinson,
20 to file a new motion for allowance of these witnesses. All I'm
21 going to require then is that you make an additional supplemental
22 showing in support of the motion that's already in the record.

23 MR. ROBINSON: All right, sir.

24 THE COURT: That would eliminate additional red tape.

25 MR. ROBINSON: Thank you very much, Your Honor.

1 THE COURT: Now, if Counsel feel your matters are urgent
2 enough so that you need to have it heard before this September
3 date, September 22nd, we've got set aside, as far as I'm
4 concerned, there's no objection to noticing it up any time on a
5 motion calendar. Before that, if you want to wait and take them
6 up the 22nd we can do that.

7 MR. ROBINSON: All right, sir.

8 THE COURT: But, if Counsel then will prepare their
9 respective orders that you prevailed on so we can have the
10 record complete.

11 MR. THOMAS: Your Honor, with respect to the orders on
12 the discovery motion, I might point out to the Court that we
13 submitted a proposed order with it.

14 THE COURT: Yeah, you say that I can sign that order since
15 it -- there was no objection to that one.

16 MR. ROBINSON: Your Honor, I do have one more observation
17 to bring to the Court's attention. When I offered this
18 particular manuscript situation here this proceeding is
19 reported and somebody asks for a transcript --

20 THE COURT: I'm not going to ask for a transcript.

21 MR. ROBINSON: All right, that's the reason I say the
22 matter of record, if the Court wanted to make some special
23 orders in that regard.

24 THE COURT: Well, I would say that the Reporter shouldn't
25 make any transcript in this case without a Court Order. So --

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MR. ROBINSON: Thank you very much.

(Whereupon the proceedings were concluded.)

1 BOISE, IDAHO, MONDAY, SEPTEMBER 22, 1975, 9:30 A.M.

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3
4 THE COURT: I want to review with Counsel the minutes of
5 the prior proceedings. We've had to make sure -- I think
6 there's some orders that haven't been prepared. I may not have
7 made it clear that I wanted Counsel to prepare orders on those
8 matters.

9 But, on September 5th we heard several motions,
10 there was a State's Motion for Production of Handwriting
11 Exemplars, it was granted, I granted the motion, if there were
12 a supplemental showing in accordance with that Statute.

13 Now, I don't -- as understand, no further
14 proceeding has been had on that, is that right, Mr. Thomas?

15 MR. THOMAS: That's correct, Your Honor. We will submit
16 the further showing that the Court asked for.

17 THE COURT: The State's Motion for Psychiatric Study,
18 I granted that motion. I'm not sure any order has been entered
19 on that. Has an order been submitted on that?

20 MR. THOMAS: I do not have any indication that I sent
21 anything in after the hearing. My recollection was that there
22 was proposed orders with the motion, am I correct about that?

23 MR. REMAKLUS: Your Honor, may I hand you my file?

24 MR. THOMAS: I beg your pardon, we do have an order.

25 MR. ROBINSON: I'm looking for mine, Your Honor. I feel

1 that I had received an order regarding the psychiatric
2 examination -- further psychiatric examination.

3 THE COURT: You've got a stamped -- Mr. Remaklus has a
4 stamped copy.

5 MR. ROBINSON: Yes, Your Honor, I do have a stamped
6 copy, stamped September 8, 1975.

7 MR. REMAKLUS: Well, this one could probably --

8 MR. ROBINSON: And I have an additional copy unstamped.
9 If the Court desires an extra copy --

10 MR. REMAKLUS: We have a copy too.

11 THE COURT: Do you also have an order on the Plaintiff's
12 Discovery Motion on the 8th?

13 MR. ROBINSON: Yes, Your Honor, I have a copy. It's a
14 -- I have an unstamped copy, I probably do have a stamped copy
15 also.

16 THE COURT: Well, why don't you give me a copy of that.

17 MR. REMAKLUS: Would you hand that to the Judge, please,
18 and file that. May want to observe the filing date that's
19 endorsed on my copy.

20 THE COURT: Had a motion for discovery and, so, the
21 defendant -- have those been complied with now, both discovery
22 orders?

23 MR. THOMAS: We have been in the process of trying to
24 insure that we've completed the discovery. I think we still
25 have some things that we are trying to do -- compare, but we are

1 approaching completion.

2 MR. ROBINSON: On the defendant's part, I think that
3 we've complied with every part, save and except for three or
4 four examples of Thomas Creech's poetry that we intended to
5 submit to the Court today as a matter of evidentiary --

6 MR. THOMAS: The defendant has not, however, conducted
7 any of the Defendant's Psychiatric Experiments or Examinations.
8 We understand those are still contemplated, is that right?

9 MR. ROBINSON: Yes, Your Honor.

10 THE COURT: There was also argued on the 5th a motion
11 by the defendant for use of a typewriter and writing paper
12 which was denied. I don't find any order and I'm not sure I
13 asked Counsel to prepare it. Do you show any order on that?

14 MR. THOMAS: No, Your Honor.

15 THE COURT: Would you prepare that order?

16 MR. THOMAS: Yes, Your Honor.

17 MR. ROBINSON: Your Honor, if I may interject this, I
18 believe that the Court left that with Mr. Thomas to see what
19 he could do, making arrangements with the Sheriff Gardner.

20 THE COURT: For a pen, not a typewriter.

21 MR. ROBINSON: Pen or pencil.

22 MR. THOMAS: I believe that's --

23 MR. REMAKLUS: I believe there's an order in here.

24 THE COURT: There was also a Motion for Pretrial
25 Conference which I granted and I'm not sure there's an order on

1 that. I don't think there is. I suppose that would have been
2 your order, Mr. Robinson. Do you have any record of that order?

3 MR. ROBINSON: No, Your Honor, I did not prepare an
4 order, I --

5 THE COURT: Would you prepare an order confirming that?

6 MR. ROBINSON: That's for both today and the pretrial
7 on October the 3rd; I believe that was the Court's ruling, or
8 the 22nd of September and the Friday prior to the commencement
9 of the trial.

10 THE COURT: Well, we set today for a conference on all
11 motions that do not require the defendant to be present. That
12 is the extent of that. There is an order of pretrial to be
13 held on October 3rd at 9:30 in Shoshone County.

14 Then, there was a motion by defendant for
15 allowance of subpoena of witnesses which was denied except for
16 witnesses subpoenaed by the State without prejudice of making
17 the further showing of materiality. Now, I don't find that
18 order on that.

19 MR. THOMAS: We didn't prepare one, Your Honor, but we
20 would be pleased to do so.

21 THE COURT: Would you do so.

22 Well, apparently, the only orders that were
23 prepared, I don't then have in the file is this one for
24 psychiatric study. I take it that -- apparently it was signed
25 and filed?

1 MR. ROBINSON: I do have two copies of that.
2 THE COURT: Well, I've got a copy here.
3 MR. REMAKLUS: Would you give me one of your extra ones,
4 please.
5 MR. ROBINSON: Yes.
6 THE COURT: All right, we have pending motions that
7 haven't been ruled on and I'll just go through those to make
8 sure we're all in agreement on that.
9 We have State's Motion In Limine to exclude
10 certain evidence. There's the Defendant's Motion to Suppress
11 Evidence, there's the Defendant's Motion for Separate
12 Examination of Jurors, there's a Defendant's Motion for Change
13 of Venue, there's a Defendant's Motion for Trial to the
14 Court; waiving jury trial.
15 Counsel have any other motions that they
16 understood were filed. There was a Motion to Produce the
17 Motor Vehicle, is that right?
18 MR. ROBINSON: Yes, I had that one and, also, Your Honor,
19 Defendant's Motion In Limine. There's a Motion In Limine by
20 both the State and Defendant.
21 THE COURT: As I recall the defendant's was filed
22 some time ago; was that correct?
23 MR. ROBINSON: Yes, Your Honor.
24 THE COURT: I remember that.
25 MR. ROBINSON: And I believe that there are briefs on

1 both sides of that.

2 THE COURT: Do you have a copy of that motion,
3 Mr. Robinson?

4 Now, there was -- I can't remember, I didn't go
5 back beyond the proceedings in Valley County, but it almost
6 seems like -- was there such a motion filed before we ever
7 started the trial? I can't remember.

8 MR. REMAKLUS: What's that, Your Honor?

9 THE COURT: Motion In Limine to eliminate those --

10 MR. THOMAS: We filed a brief. We filed a brief
11 indicating our intention to introduce that type of evidence,
12 but no Motion In Limine was filed.

13 THE COURT: Maybe that's what I was thinking.

14 MR. ROBINSON: I have a Motion In Limine dated the
15 30th day of July, 1975 and gave notice for the 12th day of
16 August, 1975. By arrangement I made with Judge Towles then
17 via telephone from Toronto, Canada, and that was before the
18 decision had been made to send the case back from the First
19 District to the Supreme Court Coordinator and reassign you as
20 Judge on the case.

21 THE COURT: I was wondering, do you have any filing
22 date on that?

23 MR. ROBINSON: No, Your Honor, I sent those, I'm sure,
24 directly to the Court in Shoshone.

25 THE COURT: I don't suppose I ever got a copy then.

1 MR. ROBINSON: Mr. Bailiff, if you would, please --

2 THE COURT: I know I didn't hear anything on August 12
3 and I wasn't even here.

4 MR. ROBINSON: No, Your Honor, that was all set over
5 because of the confusion that developed. It's on the right-hand
6 side. Then, of course, I have a later filed brief in support.

7 THE COURT: Yeah, I got your brief. Do you have a
8 copy of this Motion In Limine made in July?

9 MR. REMAKLUS: July -- I do have, thank you. Would
10 you like a photo copy of that, Your Honor?

11 MR. ROBINSON: Besides those the Court has mentioned,
12 the only other unsettled fact, I believe we would have, Judge
13 Durtschi, go to ordering of Carol Spauling. There is an order
14 in the Court that ordered her appearance at the last trial in
15 May, but to my knowledge no order has been entered.

16 THE COURT: I think I issued a subpoena for her; didn't
17 I?

18 MR. REMAKLUS: Well, they have to be taken up this
19 morning or in chambers, order for production of
20 Miss Spaulding and some more orders on out-of-state witnesses
21 and after -- in support for an order to endorse my subpoenas,
22 apparently some of our subpoenas are still down here that
23 weren't returned to us in Valley County.

24 MR. ROBINSON: For the record, Your Honor, for the
25 Court's information, I had a subpoena issued for

1 Carol Spaulding on behalf of the defense and it was
2 delivered to Ada County Sheriff and returned as not found and,
3 of course, it's true, she is not in the State of Idaho; although
4 she is an inmate assigned to the Idaho State Penitentiary.

5 THE COURT: Well, I thought when we were going over
6 this list of witnesses that Mr. Robinson had on his motion
7 for subpoena of witnesses that that was one of the witnesses
8 that you indicated you were going to subpoena, Mr. Thomas?

9 MR. THOMAS: Yes.

10 THE COURT: That's what I had checked off that the
11 State was going to subpoena her.

12 MR. THOMAS: Yes.

13 MR. REMAKLUS: I have a motion and order for her
14 production now for today, Your Honor.

15 THE COURT: All right. Well, I think somebody from
16 your office came over and picked up all those subpoenas that
17 were issued.

18 MR. THOMAS: That's right, ones that we had sent over.

19 THE COURT: Yes.

20 MR. THOMAS: Those, of course, were forwarded back.

21 MR. REMAKLUS: We only got four or five.

22 MR. THOMAS: There were some, evidently, that didn't
23 get back.

24 MR. REMAKLUS: I didn't know.

25 THE COURT: There was a lot more than four or five, I

1 know.

2 MR. REMAKLUS: That's true and we didn't discover it
3 until yesterday.

4 MR. THOMAS: I'll have to check my office just to make
5 sure everything we got back was forwarded to Mr. Remaklus.

6 THE COURT: I know you got more than four or five back;
7 unless he dropped them between here and your office.

8 MR. THOMAS: There's a possibility of that.

9 THE COURT: Okay, like I say, he picked them up --

10 MR. REMAKLUS: It's on the record that you picked them
11 up now.

12 THE COURT: It wasn't Mr. Thomas, it was somebody
13 purportedly from his office, maybe it was an impostor.

14 MR. THOMAS: Well, we got some of them back.

15 THE COURT: Maybe we'd better not deliver papers to
16 people I do not recognize, I'd better make attorneys come
17 over in person.

18 All right, I want to go through these motions;
19 first whether there are any that you don't -- really you are
20 in agreement on; if there are, then, I won't require a
21 hearing in argument on them, unless I have some problem with
22 them. I take it on the cross-Motions In Limine there is
23 substantial issue on those on both sides?

24 MR. ROBINSON: Yes.

25 MR. THOMAS: Yes, Your Honor, there is.

1 THE COURT: All right, defendant's Motion to Suppress, is
2 there one you contemplated you could take up here or was that
3 one we have to hear on the 3rd?

4 MR. ROBINSON: I'm sure that we'd have to hear that on
5 the 3rd, Your Honor.

6 THE COURT: All right. How about defendant's Motion for
7 Separate Examination of Jurors? Do you have any opposition to
8 that?

9 MR. THOMAS: No, we have no opposition.

10 THE COURT: All right, I'll grant that motion if you
11 would prepare an order to that effect, Mr. Robinson.

12 MR. ROBINSON: I have my secretary right behind me
13 taking notes, she knows what she has to do.

14 THE COURT: Defendant's Motion for Waiver of Jury Trial.
15 Is there any -- do you oppose that?

16 MR. THOMAS: Yes.

17 THE COURT: Defendant's Motion for Change of Venue, you
18 oppose that?

19 MR. THOMAS: Yes.

20 THE COURT: We've already had that argued and considered
21 it, I don't mind you making the record on it, but I don't feel
22 like I have to hear extensive arguments on that since I've
23 considered that before and I think considered most of the things
24 you've presented; except the inconvenience you've run into in
25 finding housing and things like that. I don't think that's a

1 sufficient ground to change venue.

2 Anyway, I talked to Judge Towles and he says that
3 even if there isn't housing in Wallace, there's -- you can go
4 to -- there's towns fairly close, Mullan and Kellogg he thinks
5 housing is available in, so --

6 MR. REMAKLUS: Fine with us.

7 THE COURT: But I didn't have any trouble finding housing,
8 of course, appreciate what you are trying to do, Mr. Robinson,
9 is save money but I don't recognize that as even a ground. So,
10 I'm willing to concede for purposes of the motion that
11 everything you say there is true and I still won't grant the
12 motion. So, I'm going to deny that motion. You can prepare
13 an order to that effect, Mr. Thomas.

14 MR. ROBINSON: I might advise the Court that I
15 anticipated that would be the Court's ruling, so I provided
16 myself with some type of housing.

17 THE COURT: How about this last motion Mr. Robinson
18 filed to produce that automobile for the viewing of the jury?
19 What's the situation?

20 MR. THOMAS: I don't think that we would necessarily
21 want to commit ourselves to agreeing that this jury could see
22 it because it's been substantially changed by virtue of the
23 process of laboratory analysis of the contents of it.

24 THE COURT: Well, I'll hear argument on that.

25 All right, do Counsel have any preference as to

1 which of these we hear first, or what order we hear them in?

2 MR. THOMAS: Your Honor, I would like to make just one
3 comment before we get into the motions in general.

4 THE COURT: All right.

5 MR. THOMAS: We do feel there's a problem with hearing
6 any of the evidentiary questions in the absence of Mr. Creech.

7 THE COURT: Well, what requests do we have?

8 MR. THOMAS: I think the Motions In Limine and the
9 jury trial question, the waiver of jury trial, might
10 constitute matters affecting his constitutional rights which
11 I understand to be the test for a hearing in the absence of the
12 defendant.

13 THE COURT: You've changed your first ground. You talk
14 about evidentiary matters, now you are talking about
15 constitutional rights. Are there any evidentiary matters
16 involved in those motions?

17 MR. THOMAS: I think the evidentiary matters involved in
18 the motions do affect his constitutional rights but I did want
19 to suggest that we would like to have him brought here within
20 the next two days so that the psychiatric examinations could be
21 conducted.

22 I understand that Mr. Robinson does not object to
23 that and, if that is the case, perhaps those matters, where
24 Mr. Creech is required to be present, could be heard here if
25 the Court has any availability.

1 THE COURT: I don't have any time between now and the
2 3rd of October. We'll just have to forget that.

3 MR. ROBINSON: May I address myself to the subject
4 matter of what Mr. Thomas was talking of, Your Honor?

5 THE COURT: Well, I can frankly tell both Counsel it
6 might save you some time if you are concerned about that, I'll
7 hear them up in Shoshone County on the 3rd because -- I know
8 this sounds bad for a Judge to say this, but I've pretty well
9 got my mind made up on those motions and I don't think I'm going
10 to have much trouble ruling on them; whether I do it up here,
11 whether he's present or isn't present, because, frankly, I'm
12 inclined to deny the Motion for Waiver of Jury Trial; unless
13 Mr. Robinson can convince me that there's a constitutional
14 right to waive it. I'm not going to let him waive it.

15 The Motion In Limine, I, as far as the defendant's
16 motion, I think Counsel were pretty well aware of the
17 understanding up in Cascade when we started the trial up there;
18 that is I wasn't going to let the State introduce those other
19 offenses into evidence and I still feel this same way.

20 I think, to me, there's a tenuous connection
21 between the grounds -- you can prove other crimes, anyway, as
22 far as intent and motive and premeditation, common plan or
23 scheme or any of those recognized grounds for proving other
24 crimes and, even if there is some slight connection, it seems
25 to me that prejudice so far outweighs the relevancy of those

1 things that I wouldn't let them in because of the prejudice.

2 Now, I've already indicated also on the State's,
3 I think, Motion In Limine, some preliminary observations at
4 the last motions we heard where Mr. Robinson raised, essentially,
5 the same problems in his Motion for Subpoenaes.

6 However, I think I see this problem in not ruling
7 on the matter in a Motion In Limine. I've already told
8 Mr. Robinson, unless he makes a better showing of materiality,
9 I'm not going to let him subpoena those witnesses that the
10 State is concerned about, anyway, but I'm not going to rule
11 -- or not inclined to rule at this point that he can put on no
12 evidence on that ground. For instance, I'm not prepared to
13 say that if the defendant wants to get up and is proposing to
14 testify and the defendant wants to relate some of those kinds
15 of experiences and things just in relating his background and
16 things like that, I'm not inclined to keep him from doing it.

17 But, to me, that's a far different matter than
18 saying you can subpoena Catholic Priests and textbook writers
19 and things who have never seen Mr. Creech or had anything to
20 do with him and never -- don't know anything about the facts
21 of the case to just come in as experts and testify on
22 demonology and Satan and that.

23 As far as I'm concerned, I don't see, at this
24 point, any materiality and I've read the briefs and I don't
25 see any cases. I think Mr. Robinson, perhaps, has presented a

1 theological argument for the existence of those things, but to
2 me I can't rule on evidentiary questions upon the basis of
3 theology. I think I've got to have some case law that
4 indicates that that would constitute a mental disease or defect,
5 or constitute an excuse for criminal activities and I haven't
6 seen any such cases cited yet. Until I see them, I'm not
7 intending to make any new law in this case and allow that kind
8 of evidence in by experts or -- but I wouldn't foreclose the
9 defendant, if he were to, you know, take the stand and testify
10 as to his background and things that were motivating him to get
11 into those kinds of matters.

12 MR. THOMAS: Your Honor, I do wish to advise the Court
13 about one thing related to our previous proof of information in
14 evidence about other crimes.

15 We've been in the process of investigating this
16 case and Creech's crimes from the time this case started up
17 until the present time. Our intention is to offer evidence of
18 other crimes of a different character than what we have
19 suggested in the brief already filed.

20 We are persuaded now, in the basis of what we have
21 discovered and found out in the course of the investigation,
22 that Miss Spaulding is not involved in other crimes and that
23 the statements of Creech to the effect that she was are not
24 true.

25 We have, within the last week, developed evidence

1 related to murders committed in Portland and Salem, Oregon that
2 we do intend to introduce as evidence showing a common modus
3 operandi and common evidence of premeditation and malice. We
4 considered this evidence that we will prove and I do intend to
5 file a brief illuminating this a little more as soon as we have
6 put together the materials that we just recently acquired.

7 We considered this imperative that we use this
8 evidence to rebut the defendant's anticipated claim that this
9 was a case of second degree murder. We feel it highly desirable
10 that this question be litigated.

11 THE COURT: I don't see how I can litigate anything that
12 you propose in rebuttal. I have never yet been very much
13 impressed by Prosecutor's arguments that he wants to anticipate
14 rebuttal in advance and put rebuttal in in his case in chief
15 because there's a defendant -- the defendant is going to do this
16 and get prejudiced evidence in. I don't buy that, frankly,
17 Mr. Thomas.

18 MR. THOMAS: We are not anticipating this is rebuttal
19 evidence; this is the evidence of premeditation and malice.
20 This information --

21 THE COURT: Well, you used the term "rebuttal" and you
22 said you are going to rebut his defense of second degree. That
23 sounds like rebuttal to me.

24 MR. THOMAS: Perhaps I've misstated my case -- or
25 argument in this respect. I don't think that putting on

1 evidence of first degree murder as opposed to second degree
2 murder is rebuttal. It's part of our proffered case in chief.

3 THE COURT: I agree with that, but I don't see how you
4 -- these other crimes, unless they are connected in some way,
5 constitute a common plan or scheme, proves that at least -- that
6 it's strong enough evidence that it overcomes the prejudicial
7 effect.

8 In other words, if it's relevant it certainly is
9 tenuous and remote and not sufficient -- that's the problem I
10 have to weigh. It's obviously highly prejudicial and I have to
11 weigh the prejudice against whether the relevancy is strong
12 enough and potent enough that I should let it in in spite of
13 prejudice.

14 Now, just from what you told me I still don't see
15 how the great weight, or connection between those offenses and
16 proving premeditation in this particular offense. But, I
17 appreciate perhaps you haven't fully developed your argument
18 and I'd let you do that. But, just giving Counsel some
19 tentative ideas because -- simply to respond to your remark,
20 perhaps that the defendant should be present; which you feel
21 that way, why, I am -- I don't want to take any chances of
22 hearing any motions without him present if you want him
23 present.

24 But, as far as I'm concerned, I haven't heard
25 anything yet that we can't dispose of rather rapidly on the

1 3rd of October if you want to take him up then and have him
2 present.

3 MR. ROBINSON: May I address myself, at least --

4 THE COURT: Yes.

5 MR. ROBINSON: First of all, I also anticipated,
6 Your Honor, your decision regarding the dispensing with a
7 jury and, as I -- you stated before on the 5th of September it
8 is a dilemma situation. But, there was one other thing that I
9 wanted to quickly add that I do not think was in the brief that
10 we submitted in support of that and I believe it was that
11 U.S. Supreme Court decision that in the dictum did relate and
12 bring itself to the point that if the defendant desired to
13 dispense with a jury it would also have to have the approval
14 of the Court and the State, an agreement, and then, seeing
15 what developed here today in answer to your question to the
16 State, "Do you agree?", and they said "No" they wanted a jury
17 trial.

18 Then, I believe it throws itself solely to the
19 discretion of the Court, the same as the other examining
20 prospective jurors separately is discretion, maybe, and the
21 Court has seen fit, because it has had contact with this case
22 in an attempt to select a jury before.

23 In the Motions In Limine truly I feel that they are
24 evidentiary in nature and I can appreciate what the Court has
25 stated in regards to any of the experts. First of all, the

1 reason the experts were even noted as being thought of to call
2 as witnesses is because there are many veins of belief and
3 disbelief and all they would do would be to supplement and
4 corroborate, be corroborative of the defendant's testimony in
5 that regard if, in fact, he is a person possessed.

6 This is a most difficult case to address the
7 Court to on any positive nature. I believe the Court has seen
8 so far in the files that have been given to the Court and the
9 psychiatric reports that Mr. Creech could so very well be a
10 total pathological liar, save and except for the fact that he
11 has taken law enforcement to the locations out of state, of
12 many bodies and there is some absolute proof to some of his
13 assertions.

14 The case itself is so unwieldy as to almost defy
15 even the State's or defense to close itself down in stating
16 directly to the Court just how far we can or how far the Court
17 will let us go on any of these particular matters of proof.

18 If I am following the Court correctly, and I think
19 I am, those Motions In Limine, as I see the Court's ruling
20 coming down, are pretty well in conformity to what I have
21 found the law to be and I do wish that I had cases that I could
22 cite as precedents to this Court that the Satanic Cult,
23 possession by demons and such has been decided previously in
24 any of the courts.

25 I would say that the Motions In Limine themselves

1 would more than likely have to remain to be argued on the 3rd,
2 but as far as the dispensing of the jury, I see that that can
3 be taken up at this time and we cannot, just three days before
4 trial, be confronted with the decision, are we going to have a
5 jury, aren't we going to have a jury. In the meantime
6 address ourselves to the proposition of some instructions.

7 THE COURT: Maybe you'd better enumerate for us,
8 Mr. Thomas, all the motions that you feel do involve the
9 substantial rights of the defendant that can't be argued without
10 his presence and we'll eliminate those until the 3rd, then --
11 maybe that includes all of them, I don't know.

12 MR. THOMAS: The evidentiary questions, both Motions
13 In Limine.

14 THE COURT: I don't understand what evidentiary --
15 maybe we're talking about evidentiary in a different sense.
16 Are you talking about producing evidence in these hearings in
17 support or opposition to the motions?

18 MR. THOMAS: Yes, any motions that would require the
19 production of evidence.

20 THE COURT: Well, were you proposing to introduce
21 evidence in support of your Motion In Limine?

22 MR. THOMAS: No.

23 THE COURT: Were you intending to introduce evidence
24 in support of your Motion In Limine, Mr. Robinson?

25 MR. ROBINSON: Only as to the affidavits and such,

1 Your Honor, on the -- over and above what the Court has
2 addressed itself to previously.

3 MR. THOMAS: I would.

4 THE COURT: Maybe I don't understand your point,
5 Mr. Thomas. It seems like we're using evidentiary in two
6 different senses here. I thought you were concerned about these
7 being evidentiary hearings and I did not contemplate any
8 evidence being presented on either side on any of those motions,
9 except the motions to suppress; although the substance of the
10 motions involve evidence that might be presented at the trial
11 which is different than saying we're going to have an
12 evidentiary hearing on the motions, where we present evidence
13 at the preliminary hearing.

14 MR. THOMAS: We would be -- prefer to defer to the
15 Court's feeling about -- with respect to that Motion In Limine
16 about this exception, as I indicated a moment ago, we want to
17 make a different showing about our proof of evidence of other
18 crimes than we have already.

19 So, if this motion is decided at this point, if it
20 will not be "dispositive" of anything that's going to happen
21 in the case that we're going to produce, we think we have a
22 different kind of thing to present that has been discussed in
23 previous briefs with respect to the evidence of other crimes
24 that at one time we had contemplated proffering in evidence.

25 So, with that understanding perhaps we could

1 proceed on that, but we do think that the waiver of a jury is
2 a matter that would require the defendant's presence and
3 certainly the suppression hearings, the suppression motions --

4 THE COURT: I think we all agree that the suppression
5 motion would probably even be an evidentiary motion, I don't
6 know.

7 MR. ROBINSON: Yes.

8 THE COURT: I take it it would. I don't see how you
9 can support the motion without some evidence, Mr. Robinson,
10 probably you don't intend to -- I mean, assume you intend to
11 present evidence in support of your motion in suppression.

12 MR. ROBINSON: Well, Your Honor, that motion addresses
13 itself only to a voluntary statement.

14 THE COURT: One statement?

15 MR. ROBINSON: That was taken the day of apprehension
16 and I'm fully aware --

17 THE COURT: It's a narrow motion?

18 MR. ROBINSON: Very narrow because the Court is aware
19 the State is aware, as am I, that on March the 8th of 1975 these
20 same things were repeated more in detail in Mr. Creech's
21 handwriting in conjunction with that large manuscript.

22 THE COURT: But, I take it right now we're all in
23 agreement that that would be an evidentiary motion, we'll hear
24 evidence in support of that motion and in opposition we'll
25 have to do that up in Shoshone County.

1 So, I've already got a note here that we're going
2 to hear that in Shoshone so I guess that's resolved.

3 MR. ROBINSON: Also on that, Your Honor, Dr. Heyrend's
4 examination, if the Court lets this go as far as we want to
5 with that examination, it may shed a great deal of light to
6 the Court on the mental condition of Thomas Eugene Creech on
7 the 8th day of November, 1974; the date of his apprehension,
8 as to his being under the influence of drugs, as to his
9 drug tolerance, and I believe that that's what this next
10 psychiatric examination is going to go into detail in regards
11 to, plus the fact that Mr. Creech has given his permission and,
12 more than likely will sign a consent of waiver for the type
13 of medical examination using the drugs that I spoke to the
14 Court of before.

15 That will more than likely bring out a truth that
16 all of us can rely upon. I see Dr. Heyrend's examination is
17 coming up, either this week or next week, as being a very
18 crucial examination for all of us in taking positions in this
19 trial.

20 THE COURT: Well, I guess to move ahead on this we've
21 got to resolve two questions as far as I'm concerned. I've
22 already determined, then, that the motion for -- to suppress --
23 defendant's motion to suppress will be heard in Shoshone County
24 with the defendant being present and the Motion for Waiver of
25 Jury Trial will be heard in Shoshone County with the defendant

1 being present.

2 We have the cross-Motions In Limine and I'm not
3 still sure in my own mind whether Counsel feel that we can't
4 hear those without defendant's presence or not. That's the
5 first thing we have to resolve is whether we can even consider
6 those without the defendant being present.

7 Is it your position we can't hear either one of
8 those, Mr. Thomas, without the defendant being present?

9 MR. THOMAS: I'm not, oh, probably should say that I'm
10 not as completely clear in my own mind about whether the law
11 requires his presence here in those circumstances. I think
12 that if it can be heard, that both the Motions In Limine
13 relate to strictly legal questions and if Mr. Robinson doesn't
14 propose to produce any evidence with regard to his, then it
15 probably could be said to be the case, then that makes it a
16 better case for hearing it without the defendant being present.

17 But, if it isn't something that is strictly a
18 legal question and if it is something that the defendant's
19 counsel should have the defendant present for in order to
20 consult with him, handling the motion --

21 THE COURT: Well, I've said before that if either side
22 are intending to present evidence in support of their motions
23 I don't have any question he should be here. Any time anybody
24 presents any evidence on that matter whether it's on a motion
25 or not, the defendant should be present. But, it's not clear

1 to me at this point that either one of you intend to present
2 any evidence in support of your Motion In Limine. Do you
3 intend to present any evidence in your Motion In Limine,
4 Mr. Thomas?

5 MR. THOMAS: We do not intend to present any evidence.
6 The only thing we intend to present in support of our motion
7 is the statement of summary of evidence that we will be
8 presenting.

9 THE COURT: And you'll do that by way of argument?

10 MR. THOMAS: That's right, and brief.

11 THE COURT: Well, do you intend to present evidence in
12 support of your Motion In Limine?

13 MR. ROBINSON: Not in support of our Motion In Limine,
14 Your Honor, but in opposition to the State's motion I would
15 want to make an offer of proof.

16 THE COURT: Well, I don't want to get anybody in a
17 prejudicial position because of these preliminary matters and
18 my suggestion to you, Mr. Robinson, the other day when we
19 were talking about this motion to subpoena witnesses, give you
20 my feeling on the expert witnesses on this particular subject;
21 that I was inclined to hold that such testimony would be
22 irrelevant and not let them testify. But, of course, I would
23 let you make an offer of proof. I was thinking of an offer of
24 proof in the trial and not in connection with some motion,
25 Motion In Limine, because I'm not sure, frankly, that you could

1 make a proper record, or protect your record simply trying to
2 cover it on a Motion In Limine. In fact, I think to really
3 protect your record you'd have to do it in trial.

4 MR. ROBINSON: Yes, sir, I think the way, and it would
5 have to come after Mr. Creech's testimony and based upon his
6 testimony as to whether or not it was relevant and material.

7 THE COURT: Yes. So there won't be any purpose in
8 trying to present evidence in connection with a hearing in
9 that motion -- on these Motions In Limine to make an offer of
10 proof because I don't think that would really protect you.

11 MR. ROBINSON: No. But, of course, if the Court would
12 order and grant the State's Motion In Limine, then I would not
13 have a right, later, to open that up for an offer of proof
14 based upon testimony that was then in by the defendant.

15 THE COURT: That's why I'm not inclined to, frankly,
16 grant a Motion In Limine; perhaps either one of them, other
17 than to just advise Counsel of my general feeling on the
18 matter because it's pretty hard to -- you are asking me in
19 effect to make evidentiary rulings without having heard any
20 evidence in the case and knowing what will have preceded the
21 offer of the evidence or what kind of foundation there would
22 have been layed or what will have come in. I don't see how
23 a Court can intelligently make a ruling on that kind of
24 record; other than giving some real general observations. I've
25 already given those to you.

1 In other words, I don't know what the Court can
2 do other than tell you where your laboring oar is as far as
3 where the Court's concerned. But, I've already indicated that
4 to Mr. Robinson several times as far as trying to produce
5 independent evidence of -- by people who have had nothing to
6 do with Mr. Creech and don't know any of the facts of the
7 case; just to bring them in as experts, just to testify on
8 Satanic Cults and demonology and those things. I simply don't
9 see relevance or materiality of that under any legal concept
10 I'm aware of.

11 In saying that, I'm not really prepared to say
12 that -- rule that no evidence can come in on that subject
13 because I'm not at all sure -- for instance, as I've given as
14 a first example that, perhaps, in my mind that if the
15 defendant himself were to take the stand and want to testify
16 in support of his mental disease and defect defense and also
17 his mental state at the time of the alleged offense, that
18 he couldn't go into everything in his background to lay
19 foundation for those things, including his experiences with
20 Satanic Cults and these other things. To me that's an
21 entirely different matter than saying you are going to bring
22 in an expert that has never examined him and has never --
23 doesn't know anything about the facts, just testify about
24 demonology and Satanic Cults. To me those aren't even related
25 questions.

1 MR. ROBINSON: Your Honor, for personal convenience,
2 may I request a five-minute recess?

3 THE COURT: Sure. We'll take ten minutes at this
4 time.

5 (Recess taken.)

6 THE COURT: Back on the record.

7 MR. ROBINSON: Your Honor, during the recess we ran
8 into a logistics problem that involves Mary and the evidence
9 that she marked in Cascade. Of course, my motion in this
10 court's order allows me to see that evidence but it's -- when
11 can that be done? Also, the change of possession of the
12 evidence.

13 Now, you had addressed yourself to the fact that
14 there just is no time between now and October the 3rd because
15 of all of the other duties and calendar that you have and I'm
16 sure that involves Mary also. I'm transporting this weekend
17 and I'm intending to be up in Wallace for the entire week
18 prior to trial and it appears to me that, if necessary,
19 probably going to have to have Mary there on October the 3rd
20 so that she can break the Court's seal on that evidence after
21 it has been transported.

22 THE COURT: Oh, I don't see why that's necessary unless
23 you wanted to take her up to just look at it to see that it
24 was in the same condition that she left it. That's all, she
25 can't tell what's happened to it since she last saw it.

1 MR. ROBINSON: I'm going to assume that we can
2 stipulate a great deal in regards to the possession of all that
3 evidence. I'm just looking for an opportunity to see it prior
4 to trial.

5 THE COURT: If you need her up there I can get another
6 Clerk to substitute, she's not -- we have a Clerk downstairs
7 that can come up and take her place when it's needed, so, if
8 there's some occasion arises that you need her to go to
9 Cascade, observe something, why, she can do it as far as I'm
10 concerned.

11 MR. REMAKLUS: That's what I was going to suggest.

12 THE COURT: My schedule doesn't preclude that. So, I'll
13 just get a different Clerk up here, that's all.

14 MR. ROBINSON: Well, if there's anything in that regard
15 then that needs to be inspected with Mary's presence, I will be
16 available on Saturday morning on my way through. I could have
17 set a week day, but this week is folding up a practice and
18 turning it over to two cohorts.

19 Again, with the evidence available on the 3rd of
20 October perhaps it can be examined at that time in the
21 presence of the Court and there won't be any need and
22 necessity of stopping in Cascade at all or examination prior
23 to that date.

24 MR. REMAKLUS: I especially want the record to show that the
25 evidence will be made available for inspection by defense

1 counsel at any time between now and the time it's going to
2 be transported to Wallace. Mrs. Hill had advised me that
3 she could get away and so it will be available on behalf of
4 Mr. Robinson to decide how he wants to handle it.

5 MR. ROBINSON: We'll just try to dovetail it in
6 sometime this week along with Dr. Heyrend's examination and
7 in bringing Mr. Creech back to Boise. I don't know how it's
8 going to fit together, but I'll give it all my cooperation.

9 THE COURT: The only order that you are confronted
10 with as far as exhibits, I knew I entered one and I just found
11 it and I suppose you've got copies of it because if you
12 don't the Clerk can provide you with copies. I entered an
13 order the last day that Motion for Summary Judgment -- no,
14 I guess it was shortly after that I entered an order to the
15 Clerk regarding exhibits. The order of this court that the
16 Exhibits marked for identification and lodged -- that was
17 May 22nd, let's see, yeah, that was the day the trial
18 terminated and we granted the change of venue. I entered
19 an order on that day that ordered that the Exhibits marked
20 for identification and lodged with the Clerk prior to the
21 commencement of trial in this matter be retained by the
22 Clerk of the court and then be safeguarded by him until
23 further order of the court. It further ordered the Clerk
24 shall not make the exhibits available to persons except upon
25 order of this court and that order still stands. It wasn't

1 directly to Mary, it was to the Clerk of Cascade.

2 The only role that Mary that I can see she would
3 play is, perhaps, identifying what the condition was when
4 she marked them and --

5 MR. REMAKLUS: Yeah.

6 THE COURT: -- when she last saw them and if there's
7 any change because she hasn't been the custodian. It's been
8 Mr. Crutcher in Cascade who this order was directed to.

9 MR. REMAKLUS: What's the date on that, Your Honor?

10 THE COURT: May 22nd. Obviously the discovery orders
11 were conformed too, this is a discovery order allowing
12 Mr. Robinson to examine them because I said they shouldn't
13 be made available to anyone except upon court order.

14 MR. REMAKLUS: And that order has been entered.

15 THE COURT: That order has been entered so there's
16 no problem with that.

17 MR. REMAKLUS: Just a question of working it out or --
18 and, of course, we would want Mary there because she's the
19 one that sealed them and when they were taken downstairs in
20 the Sheriff's office.

21 THE COURT: Right.

22 MR. REMAKLUS: I don't think I have a copy of that
23 order of May 22nd.

24 THE COURT: Well, here are copies.

25 MR. REMAKLUS: Thank you.

1 THE COURT: Give one to Mr. Robinson.

2 MR. REMAKLUS: Would you hand this to Mr. Robinson,
3 please.

4 THE COURT: Well, do Counsel have any additional thoughts
5 on the problem of whether we need the defendant's presence in
6 these Motions In Limine? I guess we're still on those.

7 MR. REMAKLUS: Inasmuch as the defendant is going to be
8 transported back here for psychiatric examination, would your
9 schedule preclude any kind of a hearing between now and the
10 3rd, Your Honor?

11 THE COURT: Yes, I've got solid jury trials.

12 MR. REMAKLUS: Thank you.

13 MR. ROBINSON: My understanding I hope is clear of what
14 the Court has stated and I don't feel we have any need and
15 necessity of Mr. Creech being here for either one of them and
16 when I addressed myself to the Court in regards to offers of
17 proof, I misclarified as to when and where that needs to take
18 place if it arises.

19 THE COURT: Well, if I understand -- I don't think
20 there's any question about the scope and what the State's
21 Motion In Limine is seeking to exclude and reach.

22 The defendant's Motion In Limine, of course,
23 reaches the matter that was briefed by the State prior to the
24 trial in Cascade. The matter is covered by their brief. As I
25 understand it now what you are saying, Counsel for the State,

1 is that, really, the evidence that you were talking about when
2 you filed that brief isn't -- you've sort of abandoned that
3 now, you've got a different tact on that?

4 MR. THOMAS: That's correct, yes.

5 THE COURT: In other words, the other thing that
6 concerned me, really, was the method of proving those other
7 crimes. You apparently were going to prove simply by his own
8 admissions and nothing else. Now I take it that isn't what
9 you are limiting this other proof to either?

10 MR. REMAKLUS: No, we have --

11 THE COURT: You wanted to prove that by independent
12 evidence?

13 MR. REMAKLUS: Yes.

14 THE COURT: Yes, they really do --

15 MR. THOMAS: We understand the law requires us to
16 corroborate.

17 THE COURT: I had a problem of trying to prove other
18 offenses simply by admission of the defendant even if they were
19 provable it seems to me it was by his own admissions and
20 nothing else, so -- well, let me ask you just to elaborate on
21 your theory that you think this would go to prove intent or
22 premeditation or motive? How are these connected, or related
23 in such a way that they would intend to prove that?

24 MR. THOMAS: Let me --

25 THE COURT: I understood your theory in your brief.

1 Apparently you were intending to connect them together in a
2 sense of whether it was in defense of Carol Spaulding or, if
3 she was involved in all of these that formed a common pattern,
4 apparently, that isn't involved in your present thinking?

5 MR. THOMAS: No, Your Honor, if I may, let me just sort
6 of try to summarize the facts that we have now developed and
7 that we are trying to put together in the presentation that we
8 wish to make in respect to that.

9 There are two other crimes involved; one of them
10 committed in -- a murder committed in Portland, Oregon and
11 another committed in Salem. Both were in the same week and
12 the defendant, Mr. Creech, was involved in both of those
13 offenses.

14 We have statements to the effect that in the
15 killings in Donnelly Mr. Creech contends, or has on some
16 occasions contended that the defendants pulled a knife on him --
17 I'm sorry, the decedent pulled a knife on him and that he was
18 simply defending himself, or defending Miss Spaulding on this
19 occasion.

20 The evidence that we have developed in the last
21 two weeks indicates that in Portland Mr. Creech was associated
22 for a brief period of time with a man named Gene Hilby and his
23 wife; Creech was staying at the Hilbys' home in Portland.

24 The evidence that we have developed indicates that
25 on a particular day Mrs. Hilby received a call from Creech who

1 was at the church and it was relayed to her husband, Gene Hilby.
2 The message was that Creech was in trouble at the church, that
3 some bikers were attacking him and he needed help.

4 Mr. Hilby then went on down and when he arrived,
5 he found Creech standing on the sidewalk outside of the
6 church. He pulled up his shirt and displayed a scratch on his
7 stomach which he said was a knife wound; that he had been
8 attacked by the bikers and he needed a weapon and he thereupon
9 took a gun from Hilby's truck and went in and shot a man inside
10 the church. No other persons were seen in the vicinity.

11 Shortly after that Mr. Creech went to Salem and
12 returned from there indicating to the Hilbys and another person,
13 one Linda Crandall, that he had again been attacked and stabbed
14 by some bikers and another person; that he had had to kill
15 someone there and he again displayed a knife wound, or what
16 purported to be a knife wound, namely a -- the same wound on
17 his stomach. There was no second wound, it was the same one
18 that he had displayed before.

19 In the case of the killings in Donnelly, the
20 statements indicate that Creech claims to have had a wound in
21 the neck by a knife in consequence of one of these decedents
22 having attacked him.

23 Our theory is that this shows, along with other
24 evidence, that bears on Creech's behavior, a pattern of killing
25 people on prior occasions.

1 In other words, our theory is that he believes he
2 simply wants to rationalize, or justify what he's done with
3 an imaginary attack upon himself and a theory is that the
4 occurrences in Portland and Salem and his claim to having been
5 stabbed there is the same as the situation that we have
6 in Donnelly and it shows not a self-defense situation or a
7 justification situation, it shows instead a pattern of
8 premeditated and malicious murder. We are now obliged by the
9 law and recent decisions of the United States Supreme Court in
10 Mullaney versus Wilbur to show circumstances indicating the
11 absence of justification or factors which would reduce the
12 homicides to a lesser degree.

13 We have the burden of putting that on so, we
14 propose to introduce this evidence as part of our showing of
15 the pattern of premeditated killings; that this fell into that
16 same kind of pattern that the knife --

17 THE COURT: Are you going to lay a foundation? Are you
18 going to put on his prior -- that he had a scratch on his neck
19 and then turned around and prove that that wasn't real?

20 I don't -- I know the case you are talking about,
21 but I don't understand that to require you to rebut all
22 possible theories of self-defense or provocation until at
23 least the defendant has come forward and raised the issue.

24 To me all that case means is that you can't ever
25 shift the burden to the defendant like that. Some statutes

1 do, including the statute in Idaho to prove self-defense and
2 thereby -- or to prove justification and thereby avoid proving
3 all the elements of the crime beyond a reasonable doubt. But
4 that doesn't, to me, I don't certainly read that case as
5 meaning you have to sit there and try to negative every
6 possible type of defense that might be raised without even
7 any indication that the defendant is raising those defenses.

8 Now; I don't see where you get that out of that
9 case. I think that case means that you are not entitled to
10 an instruction when it goes to the jury that the defendant has
11 the burden of proving provocation or proving self-defense.
12 The instruction will be that if he inserts that into the case
13 that you have to prove beyond a reasonable doubt that it was
14 premeditated and that doesn't relieve you of that burden and
15 you are not going to get an instruction that he has the burden
16 of actually proving it because I think that would be error
17 under that case. But, I don't think that gives you a
18 bootstrap to put in this kind of evidence just on the theory
19 that he might raise this defense.

20 I don't read it that way and I'm inclined to
21 agree with you, Mr. Thomas, I'll hear from Mr. Robinson but
22 I'm inclined to agree with you and if he does come forward and
23 present such a defense then you would be entitled to present
24 this kind of evidence to rebut it. I think this would be
25 perfectly proper rebuttal evidence if he comes forward with

1 a self-defense theory. But, I don't think you can anticipate
2 that and prove that in anticipation.

3 MR. THOMAS: Let me just expand with this one other
4 comment that may be the way we would plan to do it, we haven't
5 fully developed it.

6 THE COURT: I'm pretty sure -- I haven't read that case
7 for awhile, but I know the case. As I remember that case had
8 a statute that was probably even stronger than our statute
9 that says that puts on -- the courts have put the burden on
10 the defendant.

11 MR. THOMAS: Creates a conclusive presumption in the
12 main statute and it was stronger than the instructions that
13 have typically been given in Idaho courts. But, we are
14 having some problem with it.

15 THE COURT: And I think that creates a problem on those
16 instructions. I've been concerned about that since I saw that
17 case, but --

18 MR. THOMAS: Yes, that's all I have, Your Honor.

19 THE COURT: Mr. Robinson, do you want to respond to
20 that?

21 MR. ROBINSON: I would only point this one matter up
22 in regards to what Lynn was stating to the Court; that I would
23 agree with the Court that their cross-examination and, then,
24 rebuttal, would more than likely bring in these other matters
25 in the event that all of that has been discussed and disclosed

1 by the defendant in his defense.

2 But, I'm looking at it in the way I heard it, it's
3 going to lend itself to hallucinating, or maybe giving more
4 impact to the mental defect and disease and it's kind of a
5 two-edged sword.

6 THE COURT: That's something Counsel have to worry
7 about, I don't have to worry about that. I think the problem
8 you run into is instructions like the State versus Miller
9 talks about since the defendant has the burden to establish
10 mitigation and the prosecution, I think, maybe that those
11 kinds of things are suspect, now, in view of that -- giving
12 instructions on those things are pretty dangerous now in view
13 of that Supreme Court case.

14 MR. THOMAS: Yes, that's my impression.

15 THE COURT: But, I really didn't understand that it
16 goes to the point that you had to anticipate all those kinds
17 of defenses. It just simply means you've got to prove
18 premeditation and at least if you are -- your evidence would
19 show provocation, why, you couldn't say "Well, it was his
20 burden of proof, provocation".

21 In other words, if the fact the State develops --
22 indicates some elements of provocation or justification or
23 something like that, it would then become your burden to
24 negative that. But, to me I can't conceive that that case
25 means that if the State's evidence shows no element of

1 provocation or justification that you have to then go forward
2 and try to negative things that you guess, or imagine, the
3 defendant might raise.

4 I think the only burden you would have is if he
5 raises them, then you'd have the burden of going forward and
6 in rebuttal to substantiate the premeditation and intent of
7 first degree. You wouldn't get any instructions to act in
8 that regard.

9 Well, my inclination is still that I won't permit
10 this as part of your case in chief unless it developed as part
11 of your case in chief that there -- that this element has to
12 come in some way and be presented to the jury as part of your
13 case in chief, then I don't know what we'd be faced with. But,
14 if that isn't part of your proof, a necessary part of your
15 proof, to prove anything that would indicate the possibilities
16 of self-defense, however, I don't think you have to negative
17 it until he comes forward and raises that. Then you'd have to
18 negative it and it would still be your burden of proof to
19 prove that he wasn't provoked or wasn't in self-defense. But,
20 I don't think you have that burden until he at least injects
21 the defense into the record some way.

22 So, I won't rule that that was a justification or
23 putting this in as part of the case in chief; these other
24 offenses and only as rebuttal. My inclination at this point is
25 to handle the both of these Motions In Limine in this respect;

1 to deny the motions at this point with a provision in the
2 order denying the motion; that the respective orders, of
3 course, would be directed to the opposing counsel; that
4 opposing counsel will not offer any of this evidence that's
5 sought to be -- if you want me to reject in limine in the
6 presence of a jury.

7 In other words, it seems to me I did give you
8 adequate protection if we simply have this order recite that
9 any proof of this evidence will have to be made initially out
10 of the presence of the jury and I want it strong enough to
11 say counsel that violates that will be in contempt of court.

12 MR. ROBINSON: May I inquire of the Court because of
13 this strange, strange case; the voluntary statement itself
14 that will be introduced in the State's case in chief addresses
15 itself to the heat of passion and this knife situation and
16 Carol Spaulding's testimony is directed in that vein; that
17 she was under attack.

18 Now, certainly the defense is going to conduct
19 its cross-examination during that time and this will then be
20 a matter already inserted into the case during the State's
21 case in chief.

22 If I'm understanding what the Court is saying,
23 that doesn't open the door.

24 THE COURT: Well, if you inject it in cross-examination
25 I'm thinking it probably will. That's my inclination. I

1 think if the defendant inserts it in any way, either in his
2 case in chief, in defense or by way of cross-examination. In
3 other words, I have to recognize, of course, defenses come in
4 lots of ways. They don't necessarily come in by way of the
5 case in chief, by necessity the whole case comes in by way of
6 cross-examination and I think any defense that's injected in
7 cross-examination is subject to rebuttal then in the State's
8 case in chief just as much as it would be if the same defense
9 came in in the defendant's case in chief by way of defense.
10 That's my feeling towards it.

11 My initial remarks are simply on the assumption
12 that it won't be injected at all into the case in chief;
13 either on direct or cross. But, if it once gets in, I don't
14 think the State has to sit back and then take the risk the
15 defense will rest without putting on any evidence and not have
16 a chance to rebut it. I'm not -- I don't think the case is
17 tried in that manner.

18 MR. ROBINSON: That's the reason, Your Honor, I was
19 looking for a point of clarification because that element is
20 covered as an integral part of that written voluntary
21 statement on the date --

22 THE COURT: I'm not assuming that everything in that
23 voluntary statement is going to get in. In fact, my
24 inclination is to excise any reference to any other killings,
25 for instance; at least if you so object. I don't think I have --

1 MR. ROBINSON: In the voluntary statement?

2 THE COURT: Well, I don't know, there's so many
3 statements I don't know which one you are talking about.

4 MR. ROBINSON: I'm talking about the one on the date of
5 apprehension.

6 THE COURT: I'm not sure I've even seen that. I think
7 all I've seen is the State's brief. I think the original
8 trial all they had attached were tape recordings. I take it
9 that wasn't tape recorded. So, I don't know.

10 MR. ROBINSON: I'm not sure whether it was or not.

11 MR. THOMAS: That statement was not a part of that
12 brief.

13 THE COURT: I don't think I've ever heard the context
14 of that statement so I don't know what's going to happen on
15 that.

16 MR. ROBINSON: Well, that's the only --

17 THE COURT: I am familiar with the tape recorded
18 statements that were taken in the jail because of the
19 State-attached transcripts of those statements in their brief,
20 the original trial.

21 MR. ROBINSON: Well, this is the only statement that I
22 have addressed the motion of suppression to.

23 THE COURT: Well, we're not talking about the motion
24 to suppress, we're talking about the Motion In Limine and I
25 think that reaches all statements that involve commission of

1 other crimes, as I understand it.

2 MR. ROBINSON: Right, but the voluntary statement that
3 was made on the very day that he was apprehended addresses
4 itself to how Arnold and Bradford were killed and it doesn't --

5 THE COURT: I say --

6 MR. ROBINSON: -- it doesn't address itself to anything
7 out of state but it does incorporate within that statement
8 that there was a knife at his throat.

9 THE COURT: I see. Is that your understanding,
10 Mr. Thomas, Mr. Remaklus; that statement does include that
11 element?

12 MR. THOMAS: Yes, there's a reference to it. I can't
13 recall explicitly how it was put.

14 THE COURT: I haven't seen any -- I don't have any
15 idea what Carol Spaulding will testify to either because I
16 haven't seen any purported statements of hers. Does she have
17 -- well, her testimony include some such reference also?

18 MR. ROBINSON: Yes, Your Honor.

19 MR. REMAKLUS: This is going to be the subject of
20 another motion that we're going to prepare.

21 MR. THOMAS: We have just recently been -- the last
22 few days, spoken again with Miss Spaulding and we asked her
23 to sign an affidavit affirming some of the matters that she
24 had previously told us in interviews and conducted with her
25 and she declined to sign and gave some indication that she

1 might be changing her testimony. We expect to move to have
2 her called as a hostile witness. This concerns the knife, the
3 references --

4 THE COURT: Do you have a copy of this?

5 MR. ROBINSON: I would imagine so, Your Honor. Do you
6 have the written -- do you have number --

7 MR. REMAKLUS: Page 2 of seven. Would you hand this
8 to His Honor, please, the bottom of the page, Your Honor.

9 THE COURT: All right, this is Creech's statement.
10 Is there one by -- does anybody have any testimony of
11 Carol Spaulding, or any statements she had made that refers
12 to the knife in part?

13 MR. THOMAS: We have two statements, interviews, which
14 were conducted with Miss Spaulding which she says in both of
15 them -- or at least in one of them if it's not in both. The
16 other one is silent about it; that there was no such thing
17 present.

18 When we talked to her last week she said she
19 didn't remember for sure. We don't know what she's going to
20 testify to at this point. But, we do have reason to -- at
21 this point, start considering whether she's going to be a
22 hostile witness.

23 THE COURT: Well, this statement by Mr. Creech doesn't
24 come across quite like these incidents in Oregon. He had
25 already killed one, shot one before -- before the name even

1 appears, according to this statement. He, according to this
2 statement, he shot Tom and then another guy pulled a knife
3 and then he shot him. The shooting of Tom didn't have
4 anything to do with the knife.

5 MR. THOMAS: Our difficulty with the statements is
6 that Mr. Creech's story has changed from time to time and we
7 can't be entirely certain with what he's going to say if he
8 testifies but --

9 THE COURT: Well, that's not my problem. I've already
10 indicated if he testifies and tells the story like "The guys
11 pulled a knife on me before I ever did anything and one of them
12 stabbed my stomach" and he wants to show the jurors a scratch
13 on his stomach with a scar, why, then I'd say maybe it's
14 pretty pertinent what happened in Oregon. But, if he tells a
15 story like he did in that statement and he says that the
16 remarks about Carol provoked him and he shot one and then the
17 other one came up with a knife to me, that's sort of remote
18 from the type of pattern that's used in Oregon because it
19 wouldn't be a defense at all as far as the shooting of the
20 first one, the knife wouldn't. That would only apply to the
21 second one.

22 So, I would still have problems weighing relevancy
23 against -- or the weight of the relevancy against prejudice
24 if he comes across like he did in this statement. If he comes
25 with -- or something comes in through cross-examination or his

1 own testimony in defense that the knife was exhibited and he
2 was threatened with a knife before any shooting, before any
3 shooting ever took place, then I would say you get a lot
4 closer, then, where the relevance, perhaps, outweighs the
5 prejudice.

6 So, it's real hard to tell right now how the thing
7 is going to develop in trial. I still don't see that this --
8 I can see the problem becoming more, you know, more of a real
9 problem than with this now, now knowing this evidence, but
10 seems to me I still don't have enough to just make an outright
11 ruling in limine without seeing how it develops in trial;
12 all I can do is -- I don't see offhand how this even -- this
13 development is going to create a problem for counsel in
14 complying with the orders I indicated I wanted in there
15 denying Motions In Limine with an expressed order that these
16 matters not be raised in the presence of the jury of the
17 trial without giving the Court a chance to rule on them and
18 because what we're talking about on the State's side is the
19 State putting in evidence of these murders in Oregon.

20 Now, that certainly doesn't have to come in in
21 any way because of these things.

22 Now, again, on Mr. Robinson's point I do not see
23 how these things raise any problem with him about presenting
24 -- not presenting anything about demonology or Satan or
25 those things --

1 MR. ROBINSON: No.

2 THE COURT: -- out of the presence of the jury in the
3 first instance. So, I don't see -- I see that I'm not going
4 to be in a very good position to give Counsel too much
5 advance notice of what my ruling is going to be besides what
6 I've already told you. That's the way I weigh it right now
7 but I can see we're all going to have to wait and see to what
8 the witnesses actually testify to, what comes in on trial to
9 make a final determination.

10 As I see it right now how that comes in is going
11 to make, probably, a difference in my finding of whether the
12 prejudice outweighs the relevancy.

13 Mr. Robinson?

14 MR. ROBINSON: In the spirit of this cooperation and I
15 hope that the State and the Court realizes that the many
16 areas we're trying to do that so it will --

17 THE COURT: Yes, I'm quite impressed by that, I
18 appreciate it.

19 MR. ROBINSON: In that voluntary statement on the
20 very last page it speaks of Tom Creech's extradition to
21 Tucson, Arizona, where he was tried for first degree murder
22 and acquitted.

23 Now, there are other motions and, of course, not
24 only does the Motion In Limine but also the motion to suppress
25 go a little hand and glove.

1 Now, I know the Court is going to reserve on the
2 motion to suppress until October the 3rd, but it's a little
3 unfair to the Court in not having a copy of this voluntary
4 statement. Now, I received the statement in two different
5 ways, Your Honor. I got it in the same way that His Honor
6 saw it, in the handwriting photostatic copy and I also got
7 that same voluntary statement all typed out with the same
8 "X" marks and inserting all the same initials.

9 THE COURT: Is the text the same? Is the actual
10 text the same?

11 MR. ROBINSON: Yes, and I do have that photostatic
12 copy of the typed and I would offer it to the Court with the
13 permission of the State so that the Court would have the
14 contents of that statement between now and October the 3rd.

15 THE COURT: Yeah, I'd just make it a part of your
16 trial brief if that's all right.

17 MR. THOMAS: We have no objection.

18 MR. ROBINSON: And it does get to be a very touchy
19 situation on the voluntary statement as to how much of it
20 should be admitted and what should be excluded.

21 THE COURT: Do any Counsel see any problems with the
22 Court's feeling, at least at this time? I've understood that
23 where you are dealing with the statement and portions of it
24 are prejudicial and should be excluded that you can excise
25 parts of those portions and still allow the rest of it in.

1 MR. THOMAS: I haven't thoroughly researched this,
2 Your Honor, but our plan would be to offer only those parts
3 that relate to the admission to the killings and we would not
4 -- we would ask to have excised the parts that raise any
5 defensive matters.

6 We don't believe that what he has said about the
7 justification or the attack on him is true in light of all
8 the other evidence that we have developed and we don't want
9 to put that in with this statement.

10 THE COURT: Well, I can see a problem there. I think
11 we're going to run into -- the problem will arise in two
12 different ways. I can see that if a party, the party that's
13 offering the statement, it might work both ways. This might
14 cut both ways if the party offering the statement is simply
15 trying to get out -- keep out defensive material, that's
16 one thing. The other side might want it to either go in, not
17 go in at all or go in with everything like that.

18 In other words, we might get a situation where one
19 party is offering and some parts are simply not admissible for
20 any purpose. I mean, because they are not material or
21 relevant or not -- or so highly prejudicial that the
22 prejudice outweighs the relevance.

23 Now, that's the kind of thing I'm talking about
24 keeping out. I think matters that are clearly relevant and
25 material in the statement, whether they are defensive matters

1 or prosecution matters is going to be harder to keep those things
2 out than it will be something that's totally irrelevant or
3 immaterial or, perhaps, the prejudice outweighs the relevancy.

4 My only point at this time is whether either
5 Counsel think that there's -- a court can commit reversible
6 error by taking anything out of a statement; even though it's
7 totally irrelevant or immaterial and prejudicial?

8 In other words, does the Court just have one choice,
9 either let it in in total or not at all or take out inadmissible
10 parts and let the rest in?

11 MR. ROBINSON: Well, there, Your Honor --

12 THE COURT: For instance, if you take these tape
13 recordings, or transcripts of tape recordings that are made in
14 the jail and I've read over, at least in one or more of those
15 he describes, touches on the actual crime he's charged with here.
16 But, in that total statement, at least given at that sitting,
17 he gets into a lot of these other offenses too and, now, I've
18 never felt it would be a problem in this kind of a statement;
19 assuming it's voluntary and foundation is properly laid about
20 letting in the parts that deal in this particular offense,
21 charge, here. Now, I was thinking in terms of all parts that
22 relate to the offense but keeping out statements of other
23 offenses in other states.

24 Now, I never saw any legal problem of handling
25 those statements in that way.

1 MR. ROBINSON: But, Your Honor has just pinpointed
2 exactly what bothers the defense here; that in the event the
3 voluntary statement, or this portion of the statement that is
4 let in and let's just for instance say the voluntary statement
5 is let in in total, kind of opening up the door of Pandora's
6 Box. Does it then allow the State to go into the Portland
7 incidents just because the door is open?

8 THE COURT: My inclination right now, as I've already
9 indicated was, if it comes in the way the voluntary statement
10 says, my feeling right now, no, because that's still substantially
11 different than the Oregon incidents. That statement about the
12 knife wouldn't be a defense at all to one count of the
13 Information, it would only be a defense to the second -- I
14 don't know which is which, but it wouldn't be a defense at all
15 as to the first victim that was shot; only as to the second and
16 to me that difference -- that's a rather significant difference
17 from the Oregon situation.

18 MR. ROBINSON: And for the Court's information and for
19 the record, Mr. Lynn Thomas was in my office, we were attempting
20 to make the exchange of information when I returned a telephone
21 call on the 12th day of September to Bert Koon at the Nevada
22 State Prison, responding to Carol Spaulding, what Mr. Thomas
23 is advising the Court about a change may very possibly be true
24 because that which was related to me on the phone by
25 Carol Spaulding is that whoever is handling her in the advisory

1 capacity has said "Don't say anything. You don't volunteer
2 anything, you are going to get yourself in trouble and the
3 more you put yourself into the case the more trouble you are
4 buying for yourself."

5 My response to Miss Spaulding at that time was you
6 should have your own attorney advise you, our Idaho court has
7 appointed Mike Lee to advise Carol Spaulding on other things
8 more in regard to the child and, under those circumstances, I
9 just have to step back and I believe that Mr. Thomas does too,
10 in a lot of ways, maybe not as much as defense counsel because
11 I certainly don't want to be accused of trying to change a
12 witness's testimony such as the young man did in the little
13 case back in Virginia.

14 There's kind of dangerous grounds, I don't know
15 what she's going to say and how much she's going to testify,
16 any previous statement that she's made.

17 THE COURT: Well, all I can tell you at -- again for
18 your guidance, in my initial feeling my initial feeling is that
19 if the testimony, whether it's true, Carol Spaulding or
20 statement comes in that Mr. Creech was being threatened with a
21 knife before he ever pulled the gun or did anything offensive,
22 to me, then, the relevance of these Oregon incidents substantially
23 outweighs the prejudice. If, in any sense, it appears
24 Mr. Creech had acted first and even to the point of shooting
25 one of the victims before the knife appeared, to me the

1 relevance of the Oregon incidents is almost minimal compared to
2 the prejudice because Creech isn't acting in self-defense; then
3 the guy that pulled a knife is acting in self-defense because
4 here he knows his buddy has been shot and he's next and to me
5 that doesn't print a picture of self-defense on Creech's part
6 at all.

7 So, to me that doesn't really lay the kind of
8 foundation I'm looking for for letting the Oregon incidents in.
9 But, sure, if the evidence comes in through Carol Spaulding or
10 otherwise, well, the guy made -- pulled out a knife and stuck
11 it at Creech's throat, or stuck him and scratched him and,
12 then, pulled his gun out and started shooting, why, then, that
13 brings it squarely within the pattern of the Portland -- Oregon
14 killings and I would be inclined to let it in then.

15 So, that's the way I'm going to weigh it and I'm
16 going to have to wait and see how it comes and -- or develops
17 before I can rule on it.

18 So, I think all I can do is do what I've indicated,
19 deny the motions at this point without -- and include in the
20 orders of denial that no counsel will present any evidence
21 which was sought to be excluded by the Motion In Limine without
22 -- in the presence of the jury without having the Court giving
23 the court an opportunity to rule on that at the time of trial.

24 So, if you will prepare orders to that effect,
25 why, that will take care of the Motions In Limine.

1 I guess -- where we're left, then, everything else
2 is going to be heard on October 3rd except the one motion to
3 produce the auto and I'll hear anything you have to produce on
4 that motion.

5 MR. REMAKLUS: The motion to produce the automobile?

6 THE COURT: It isn't really a -- it's really a motion,
7 I suppose, to the real motions, the motion to let the jury view
8 it and there's no use in having me make them take it up there
9 unless I'm going to let the jury view it. So, I think I'm
10 going to have to, in effect, tell you I'm going to let the jury
11 view it. Before I'll issue the order to cause them all the
12 trouble to take it up there, there wouldn't be any purpose of
13 my having them do it.

14 MR. ROBINSON: I have examined the vehicle myself,
15 Your Honor.

16 THE COURT: I'll hear anything you have to say on that,
17 Mr. Robinson, in support of that motion.

18 MR. ROBINSON: This vehicle, I don't know whether the
19 Court has seen it or not --

20 THE COURT: No, I haven't.

21 MR. ROBINSON: It's a large, 1956 Buick --

22 THE COURT: I haven't seen it at all.

23 MR. ROBINSON: I don't know, it's a very spacious
24 vehicle on the interior. The appearance of that Buick in itself
25 would have a great deal of impact on the jury in just

1 understanding what these four people were riding in on that
2 particular night and the description of the activities of
3 Bradford in the back seat of that vehicle from Grangeville all
4 the way down to Donnelly.

5 All of it, I believe it raises the need and
6 necessity for the jury to see the type of vehicle that they
7 were in and the actual location within that vehicle that all
8 parties were sitting at the time that these two killings and
9 these two events took place.

10 Now, I don't believe that any photograph is adequate
11 to portray that to the jury adequately. We're not talking about
12 all that much expense, the vehicle itself could be put in tow,
13 its wheels are all up -- all the tires are up and I don't know
14 whether it runs or not. It was running the night of
15 November the 3rd and just ran out of gas. The only thing
16 that's been disrupted in the interior of the car is that seats
17 themselves are in a slight state of array and that could be
18 straightened out just by rearranging, putting the seats in
19 where they should be.

20 THE COURT: Mr. Thomas?

21 MR. THOMAS: Your Honor, we're not really certain from
22 what has been included in what Mr. Robinson says just what
23 purpose this vehicle is going to be offered for. It isn't
24 driveable, it will cost us something to bring it up there and
25 we don't know whether we even object to it or not on the basis

1 of what we've been told.

2 So, that's about all we can say is that unless we
3 know and have some idea of the purpose for which the jury is
4 going to be asked to be allowed to view the vehicle, we're not
5 in a position to even object to it or to agree, either one.

6 THE COURT: I have to take Mr. Robinson's word that the
7 only purpose is going to have them view it is to see its size
8 and spaciousness of the -- space that's involved in the inside
9 of it.

10 MR. ROBINSON: Yes.

11 MR. THOMAS: I don't think, Your Honor, that would be
12 reason for taking it up there because those things can be
13 easily enough described by witnesses and the position people
14 are sitting in for what relevance that has, can be easily enough
15 described that there's really no need to have the vehicle there.

16 THE COURT: Yes, if that's the only purpose my inclination
17 is to agree with that. I'm going to deny the motion on the
18 basis that's the only purpose that it's being sought for.

19 MR. ROBINSON: Okay.

20 THE COURT: Prepare an order to that effect,
21 Mr. Thomas.

22 Well, if Counsel will prepare the respective orders,
23 then I guess that's everything.

24 MR. THOMAS: Your Honor, there's just one other matter.
25 To facilitate the Court's earlier order relating to a

1 psychiatric examination, we would like to apply for an order
2 to have the defendant transferred here on Wednesday so that
3 Dr. Heyrend and his associate, Dr. Estess can examine the
4 defendant pursuant to that order at that time. As I --

5 THE COURT: Do you have any objection to that, or are
6 you going to do it by agreement?

7 MR. ROBINSON: No, Your Honor, I'm not going to have any
8 objection. Of course, at that time it was also -- or at the
9 time of the psychiatric examination, it was also my intent to
10 have our own polygraph expert --

11 THE COURT: Can't you put all that in one order and
12 stipulation in --

13 MR. ROBINSON: Yes.

14 MR. THOMAS: Yes.

15 THE COURT: I'll agree to that. Have you got something
16 in mind about how you are going to arrange the physical,
17 actual physical transportation?

18 MR. THOMAS: Sheriff Palmer indicated he'd be happy --

19 THE COURT: I suppose to the expense of Valley County?

20 MR. REMAKLUS: I would imagine that's the case.

21 THE COURT: Yes, I'll agree with that if you've got it
22 all worked out, I don't have any objection.

23 MR. ROBINSON: Your Honor, I have one more matter I need
24 to give to the Court's -- bring to the Court's attention and
25 make a matter of record.

1 As of last Thursday I was advised last night, a
2 person that identified himself as Dr. Cochran, psychiatrist of
3 Coeur d'Alene called on Tom Creech in Wallace and represented
4 himself to be connected with my office for the purposes of
5 investigating and Tom advised me that he gave him all the
6 information, talked to him all day and, of course, I know of
7 no such doctor, psychiatrist or otherwise by the name of
8 Cochran.

9 I also have been advised over the last couple of
10 weeks that there has been solicitation of Thomas Creech's
11 defense by one Karl Maxey of Spokane, Washington, and from one
12 who identified himself as E. P. Staley with one note and,
13 apparently Mr. Staley is an associate of Mr. Karl Maxey's
14 office and I called Mr. Karl Maxey, he denied that he had
15 any connection with the case whatsoever. But, then, I'm
16 advised as of last night that another solicitation on the
17 letterhead was made.

18 So, I don't know exactly what is going on up there
19 and some of the -- the circumstances may be pointed out, to do
20 something in violation of this Court's order regarding that
21 publicity or so --

22 THE COURT: Don't you have some understanding with your
23 client? I thought that would have been the first thing you had,
24 an understanding with him that he doesn't talk to anybody without
25 clearing with you.

1 MR. ROBINSON: I have that understanding and have had that
2 understanding, Your Honor, but somehow or another when he
3 starts freaking out or obtaining drugs and spacing out --

4 THE COURT: You mean he's getting drugs in the Wallace
5 Jail?

6 MR. ROBINSON: He's had drugs at the Ada County Jail,
7 in the Shoshone County Jail and I don't know of any particular
8 instances that he had it in the Valley County Jail, but I don't
9 know that since he was first incarcerated that he's ever been
10 without drugs.

11 THE COURT: That's kind of interesting. I have never
12 heard that before.

13 MR. THOMAS: It appears to be true from everything we
14 can determine.

15 MR. REMAKLUS: It doesn't appear to me to be true because
16 I'm not aware of it. I want that understood.

17 MR. ROBINSON: There are several occasions where he's
18 gone to the hospital that he has actually spaced out on
19 windowpane.

20 THE COURT: I guess I don't know --

21 MR. ROBINSON: A form of LSD, but I wanted to make the
22 Court aware of these circumstances because I'm never sure from
23 one day to the next what's going to happen.

24 THE COURT: I'd like you to inquire about this,
25 Mr. Thomas or Mr. Remaklus. I think maybe I'll be involved in

1 this if he's getting drugs at Wallace. I would certainly be
2 surprised if he was, but I'd like to know how he's getting them.

3 MR. THOMAS: I think the authorities would also like to
4 know, but I can't speak for any firsthand knowledge. The
5 information I have is that what Mr. Robinson has indicated is
6 correct; that he's -- someone has smuggled drugs into the jail
7 for him.

8 THE COURT: Somebody who is visiting him, then, or --

9 MR. THOMAS: I'm sorry, I have no other details than
10 that and I -- all I can say is what I've heard is that it
11 happens all the time and in jails with somebody who has some
12 kind of connections. It sounds like it might be visitors, but
13 I really am not very well supplied with details on how it
14 happened.

15 MR. ROBINSON: I have nothing further, Your Honor.

16 MR. REMAKLUS: I have a question. Are you going to be
17 in this afternoon to sign some orders for production of
18 Miss Spaulding?

19 THE COURT: Yes.

20 MR. REMAKLUS: Thank you.

21 THE COURT: All right, we'll be in recess, then.

22 See you on October 3rd.

23 (Whereupon the proceedings were concluded.)
24
25

1 WALLACE, IDAHO, FRIDAY, OCTOBER 3, 1975, 10:07 A.M.

2
3
4 THE COURT: This was the time set for the hearing on
5 Defendant's Motion to Suppress evidence, a motion specifically
6 directed to a statement taken on the 8th day of November, 1974.
7 I note, Mr. Robinson, the motion isn't supported by an
8 affidavit. My usual rule, when the motion isn't supported by
9 an affidavit making a prima facie case, is to require the
10 defendant to go forward with the evidence, to explain the
11 basis for the motion and anything he has in support of it.

12 Where the motion is supported by an affidavit
13 making a prima facie case, then I require the State to respond
14 to that showing. But, Counsel have any differing opinion about
15 that procedure? I'll hear from you, Mr. Robinson.

16 MR. ROBINSON: I have no objection to that procedure,
17 Your Honor.

18 MR. REMAKLUS: None, Your Honor.

19 THE COURT: I'll hear any opening statement you want to
20 make on the motion, Mr. Robinson.

21 MR. ROBINSON: All right. Your Honor, basically the
22 motion to suppress on this particular voluntary statement is
23 two-fold.

24 Number one, I believe that through all of the
25 investigation reports and statements on that date of

1 apprehension made by the police officers, made to the police
2 officers by Tom Creech and by Carol Spaulding shows and
3 indicates that immediately prior to the apprehension act
4 itself that Tom had taken drugs and he was under the influence
5 of those drugs at the time that this voluntary statement was
6 made in Mountain Home. Therefore, basically, because he was
7 strung out on the drugs and not of a full and consenting
8 mind understanding the Miranda Rights that are in the
9 information part of that particular voluntary statement, I do
10 not believe that it has met the requirements of the understanding
11 of the defendant himself as to making a voluntary statement
12 under and in that condition.

13 Now, I believe our record does show that many
14 other police reports and such which have been marked as
15 Exhibits are available to the Court to show and indicate that
16 this condition did exist at that time on the 8th day of
17 November, 1974.

18 The second part of my Motion to Suppress addresses
19 itself to particular extraneous matters that are covered in
20 the voluntary statement that are highly prejudicial. I would
21 direct the Court's attention if -- does the Court have a copy
22 of the voluntary statement before it, sir?

23 THE COURT: I know you furnished it to me with
24 pretrial material but I didn't bring that over to the courtroom
25 with me. I don't have it before me.

1 MR. ROBINSON: If I may approach the bench, Your Honor.

2 THE COURT: Yes. I've seen it, but I haven't --

3 MR. ROBINSON: The typewritten copy is on the bottom.

4 I have put a "V" mark in the margin.

5 THE COURT: I don't need both of them. Which one do
6 you want me to use?

7 MR. ROBINSON: The typed one is probably the best to
8 use, Your Honor.

9 THE COURT: All right.

10 MR. ROBINSON: And that would be on Page 3, about
11 two-thirds of the way down I have put a "V" mark as to the
12 beginning of the extraneous, very prejudicial matters that
13 were covered in this voluntary statement; making reference to
14 out-of-state involvements and also in-state involvement in
15 participation in a robbery of a State Street liquor store, or
16 beverage store.

17 THE COURT: I see a reference there to something to do
18 with "grass" I suppose.

19 MR. ROBINSON: I believe that I have started that "V",
20 Your Honor, he never killed anyone in Portland, and from there
21 clear to the end of that statement. Clear to the end.

22 THE COURT: All right.

23 MR. ROBINSON: I believe that matter should be --

24 THE COURT: Excised?

25 MR. ROBINSON: Excised and stricken from the voluntary

1 statement that may be introduced. If the Court doesn't grant
2 our motion for the suppression of the entire voluntary
3 statement because of the influence of drugs at the time of
4 making the same --

5 THE COURT: You are not questioning the sufficiency of
6 the warning and advisement as far as his rights? It's his
7 comprehension?

8 MR. ROBINSON: Just comprehension and understanding.
9 While the Court is considering this motion I would wish to
10 remind the Court that on the 8th day of March, 1975 that a
11 handwritten, as well as a typed manuscript was, and had been,
12 prepared by Mr. Creech. Apparently voluntarily delivered to
13 Bud Mason, investigator for the Attorney General's office and
14 Ken Matthews, reporter for the Boise Statesman; that in it
15 contains matters relating specifically to the Donnelly, Idaho
16 matter. At that point, of course, my Motion to Suppress does
17 not reach.

18 THE COURT: I'd like to make one inquiry of Counsel.
19 I'm concerned, of course, since we haven't started the trial
20 proper or the selection of the jury and the jury won't be
21 sequestered until that procedure is finished, it would be
22 certainly prejudicial if any of this hearing and substance of
23 this hearing was reported in the press or news media. Now,
24 are Counsel familiar with everyone in the courtroom?

25 MR. ROBINSON: No, I'm not, Your Honor.

1 MR. REMAKLUS: Your Honor, everyone present in the
2 courtroom, five people here are connected as witnesses, or as
3 matron and Mr. Magnusen.

4 THE COURT: He's an officer of the court so I'll let
5 him stay.

6 MR. REMAKLUS: He's the Prosecutor of this County and
7 I think everyone here is qualified to be present.

8 THE COURT: I don't feel this is particularly necessary,
9 but out of an overabundance of caution, let me just advise
10 everyone, every witness and every court officer and every law
11 enforcement officer that's here that they are all subject to
12 my order that's been entered in this case on publicity so
13 none of this can be reported without violating that order to
14 any press or news media.

15 MR. ROBINSON: Your Honor, for the record I am
16 satisfied with the representation of Mr. Remaklus that all of
17 the parties who he identified are.

18 I would inquire of the Court as to whether or not
19 this door to the courtroom is secured to the outside?

20 MR. MAGNUSEN: The door is presently locked. I just
21 checked it myself.

22 THE COURT: Fine, I'm satisfied.

23 MR. REMAKLUS: I'm wondering, could we turn off -- I
24 really can't hear in here with that air conditioner on.

25 THE COURT: Everybody has a hard time hearing me, I'll

1 just have to speak louder, maybe, Mr. Remaklus.

2 We'll just ask everyone to speak up so we can
3 hear over that.

4 Counsel for the State wish to make any opening
5 statement at this time?

6 MR. REMAKLUS: No, other than since we didn't have an
7 affidavit to go on I think we may have to ask for a
8 continuance of this hearing to get some other witnesses here,
9 but we're certainly prepared to go ahead at this time as far
10 as we can, Your Honor.

11 THE COURT: All right, we'll proceed, then,
12 Mr. Robinson, you may call your first witness.

13 MR. ROBINSON: All right, we call Mr. Creech.
14 Mr. Creech, will you stand, raise your right hand and face
15 the Clerk to be sworn, please.

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THOMAS EUGENE CREECH,
the defendant herein, having been first duly sworn, took the
stand and testified as follows:

THE COURT: Mr. Creech, I guess we're going to have a
hard time hearing so you speak loudly.

THE WITNESS: Yes.

DIRECT EXAMINATION

BY MR. ROBINSON:

Q State your full name.

A Thomas Eugene Creech.

Q Are you the Thomas Eugene Creech who is the
defendant in this action, State of Idaho versus
Thomas Eugene Creech?

A Yes.

Q When were you apprehended on the particular
charges you are facing in this action?

A I believe it was November 8th.

Q 19 --

A '74.

Q And where was that?

A Glenns Ferry, Idaho.

Q What is the date of your birth?

A September 9, 1950.

711 CREECH, T., Def., Di.
By Mr. Robinson.

1 Q So, at that time you were a 24-year old?
2 A Yes.
3 Q You have since turned 25; is that correct?
4 A Yes.
5 Q Tom, will you advise the Court prior to your
6 apprehension on November 8th of 1974 what drugs you had taken
7 during your lifetime?
8 A Everything.
9 Q Everything which would be including, what,
10 marijuana?
11 A Yes.
12 Q The particular name of that is "pot"?
13 A Pot, weed.
14 Q All right. Now, would you advise the Court to the
15 extent, and name the drugs that you have taken?
16 A I've taken heroin, cocaine, speed; which is
17 Methedrine --
18 Q You'll have to speak up loudly.
19 A Speed, all types of LSD and I've used them all
20 pretty heavy.
21 Q Have you used windowpane?
22 A Windowpane -- I dropped three hits of windowpane
23 acid right before we was taken out of the car the night I was
24 busted.
25 Q What is windowpane acid?

1 A. It's a form of LSD, drug, it's an hallucinate drug.
2 Q. For the approximate 30 days prior to your apprehension
3 had you been popping pills?
4 A. Speed.
5 Q. And had you been taking this windowpane?
6 A. Yes.
7 Q. On what regularity?
8 A. About every day.
9 Q. Would you describe to the Court the effect of one
10 normal dosage?
11 A. Of what? Speed or acid?
12 Q. Of windowpane acid.
13 A. Well --
14 MR. REMAKLUS: I think we should, Your Honor, confine
15 the questioning as to the day in question and what happened then.
16 THE COURT: Yes, I'll sustain the objection although I
17 would interpret the question as being related to that.
18 MR. ROBINSON: Yes, Your Honor.
19 THE COURT: I want it specifically directed at that
20 particular time, Mr. Creech.
21 Q. BY MR. ROBINSON: Now, during the day of
22 November the 8th, 1974, the 24 hours immediately preceding your
23 apprehension, would you describe to the Court what particular
24 drugs you did take and what effect they had on you and your
25 mental condition.

1 A. The day that I was busted?

2 Q. Yes.

3 A. I took three hits of windowpane; which they were
4 4-way hits which was 500 micrograms per hit and I was dropping
5 speed, smoking marijuana and drinking beer.

6 Q. Would you give the Court the information as to what
7 quantities of those drugs you've just named that you took
8 during that 24 hours prior to your apprehension?

9 A. How much?

10 Q. How much.

11 A. Well, I took the three hits right before I was
12 busted.

13 Q. You mean after the police car --

14 A. As soon as they pulled us over I took them. I
15 dropped three hits of windowpane.

16 Q. And what effect did that have upon your mental
17 condition at that time?

18 A. It just spaced me out where I didn't know anything.

19 Q. Spaced you out?

20 A. Yeah, I just -- I didn't know what was going on.

21 Q. On one hit, how long does that normally keep you
22 spaced out?

23 A. Between six and eight hours.

24 Q. Have you ever taken three hits all at once prior to
25 that particular occasion?

1 A. No, not 4-way hits.

2 Q. What do you mean by "4-way hits"?

3 A. When each -- if it's a 4-way hit, each hit is

4 500 micrograms, so one hit would be 2,000 micrograms.

5 Q. I don't convert that into 4-way.

6 A. You are not supposed to take that much at one time.

7 It's not normal to take that much.

8 Q. All right. Now, when you say you were "spaced out",

9 and that you don't remember what you were doing, can you

10 describe your whereabouts when you were under that condition?

11 A. I know I was in two different jails that night, but

12 I don't know.

13 Q. Could you identify the people you were talking to?

14 A. Yes.

15 Q. Who were they if you know?

16 A. Jim back there (indicating) and Wess.

17 Q. Jim is in the front row?

18 A. Yes, Maxwell from Valley County.

19 Q. And who else?

20 A. Wess Woodall.

21 Q. Is he in the green jacket?

22 A. Yes.

23 Q. Now, where did you see them?

24 A. At one of the jails that I was at.

25 Q. Do you know which one?

1 A. No.

2 Q. Do you remember any other persons; whether they are
3 present here or not, that you saw at either one of those first
4 two jails?

5 A. No.

6 Q. Do you specifically remember what you were told and
7 what you said?

8 A. No.

9 Q. Do you recall on that date as to whether or not you
10 received the warnings; that you were entitled to an attorney and
11 you didn't have to talk to them unless an attorney was present?

12 A. Do I remember if I was or was not?

13 Q. Do you remember whether or not all of that was told
14 to you at the time that you were in either one of those two
15 jails?

16 A. I think so.

17 Q. After that was told to you, do you recall making
18 the voluntary statement that you have seen many times since
19 then?

20 A. I didn't make the statement until the following --
21 it was the next day afterwards.

22 Q. Where?

23 A. I don't know what jail it was.

24 Q. In a third jail?

25 A. It was in the -- in one of the jails I was in

1 before I went to Ada County -- or Valley County.

2 Q Before you went to Valley County?

3 A Yes.

4 Q Now, Tom, you have read the full contents of the
5 voluntary statement itself; have you not?

6 A Yes.

7 Q Do you recall now at this time whether or not you
8 made those statements at the time of 2:00 a.m. on November 8,
9 1974?

10 A Some of them I think so, but I'm not sure about all
11 of them.

12 Q Were you writing anything down yourself?

13 A No.

14 Q Was someone else writing what you said?

15 A Yes.

16 Q Then they offered the paper for you to look at
17 and approve as to whether or not it was what you said?

18 A I'm not sure if they offered it to me or not.

19 Q Did you sign it?

20 A I'm not sure if I signed it or not either.

21 MR. ROBINSON: May I approach the witness, Your Honor?

22 THE COURT: Yes, um-hmm.

23 MR. ROBINSON: Possibly this is two-fold in compliance
24 with the Court's order at the same time.

25 Q BY MR. ROBINSON: Mr. Creech, I've laid out a sheet

1 of yellow paper and handed you my pencil. Will you write your
2 full name and your signature.

3 A. (Witness complied.)

4 Q Now would you also, underneath that, just write
5 "Tom E. Creech".

6 A. (Witness complied.)

7 MR. ROBINSON: Thank you very much. If you would mark
8 that Suppression Motion Exhibit 1.

9 THE COURT: A, we'll mark Defense Exhibit A and use the
10 letters.

11 MR. ROBINSON: If you would hand it to the Judge.

12 THE COURT: Perhaps, under our procedure, Madam Clerk,
13 if you mark the Exhibit, state to the Reporter what the Exhibit
14 is that you mark.

15 THE CLERK: Exhibit A marked for identification.

16 (Defendant's Exhibit A marked for identification.)

17 Q BY MR. ROBINSON: Tom, I'm handing you a photo copy
18 purporting to be a photo copy of a voluntary statement you did
19 make at 2:00 a.m. on November 8, 1974 and ask you to specifically
20 look at your signature at the bottom of the first page.

21 Do you recall signing that particular page on that
22 date at that time?

23 A. No.

24 Q Does that purport to be your signature? Is it
25 similar to your handwriting?

1 A I'm not sure because I write different sometimes.
2 Q You write different sometimes? What you've just
3 wrote on that piece of yellow paper, is that your normal mode
4 of signing your signature?
5 A Yes.
6 Q All right. Would you describe to the Court what you
7 mean by you "write differently at different times"?
8 A I write sloppier.
9 Q When you are in a bigger hurry?
10 A Or, you know, just -- just when I'm upset or nervous
11 or in a hurry or something I just write differently.
12 Q Are you nervous and upset, in a hurry at the present
13 time?
14 A Yes.
15 Q Do you think it's affecting your handwriting?
16 A Some.
17 Q All right. On Page 2, does that purport to be your
18 signature there also at the bottom of the page?
19 A I'm not sure.
20 Q Is it similar to your handwriting?
21 A No.
22 Q On Page 3, the bottom of the page, does that purport
23 to be your signature there?
24 A No.
25 Q Is it similar to your handwriting?

1 A I can't say for sure.

2 Q On Page 4?

3 A No.

4 Q On Page 5, does that appear to be your signature?

5 A No.

6 Q On Page 6, does that appear to be your signature?

7 A No.

8 Q And on Page 7, does that purport to be your
9 signature?

10 A No.

11 THE COURT: I didn't hear your answer.

12 THE WITNESS: No, sir.

13 MR. ROBINSON: May I have that marked.

14 Your Honor, with the Court's permission, I'd like
15 to have this marked and make myself another photostat of the
16 same so that I have another copy.

17 (Defendant's Exhibit B marked for identification.)

18 THE COURT: All right, Defendant's B may be marked with
19 leave for Counsel to substitute -- or not substitute, to make
20 a copy of for his use.

21 MR. ROBINSON: Thank you very much, Your Honor.

22 THE COURT: You are not going to substitute a copy, you
23 want to leave this?

24 MR. ROBINSON: I'll leave that one, yes, and just make a
25 copy for my own file and information.

1 THE COURT: You may have that permission.

2 Q BY MR. ROBINSON: Tom, after your apprehension,

3 would you advise the Court when you first felt that you were

4 of clear mind; when that was and where you were?

5 A In Ada County Jail.

6 Q When?

7 A Sometime afterwards, I'm not sure.

8 Q Would it have been before Thanksgiving of 1974 or

9 after Thanksgiving of 1974?

10 A Afterwards.

11 Q Was it before Christmas of 1974 or after Christmas

12 of 1974?

13 A I think it was after Carl went to the joint.

14 Q Pardon?

15 A I think it was after Carl went to the joint.

16 Q Do you know what date that was?

17 A December 24th.

18 Q Day before Christmas? Christmas Eve?

19 A Yes.

20 Q Do you recall clearly in your mind last Christmas?

21 A Yes.

22 Q And were you at that time in the Ada County Jail at

23 Boise?

24 A Yes.

25 Q How long had you been there?

1 A. Since November.

2 Q Since sometime in November?

3 A. Yes.

4 Q Now, do you clearly remember anything prior to that

5 time?

6 A. Some things, but not everything.

7 Q You remember some things that occurred while

8 incarcerated at the Ada County Jail in Boise prior to that time?

9 A. Yes.

10 Q Such as what?

11 A. The visits I got from different police officers.

12 Q During that period of time were you receiving

13 medication from any doctor?

14 A. Yes.

15 Q Who?

16 A. Dr. Heyrend.

17 Q Do you know what kind of prescription medication

18 you were receiving from Dr. Heyrend at that time?

19 A. Sodium Ametol and Vistaril, Thorazine, Donnitol

20 and Halodrin.

21 Q Did you have an understanding as to the reasons for

22 these prescription drugs? Were they explained to you by

23 Dr. Heyrend what they were for?

24 A. Yes.

25 Q And what were they for?

1 A To keep my head straight.

2 Q After this point in time that you identify,
3 approximately December 24th of 1974, do you recall most events
4 that occurred after that with clarity?

5 A No, not everything.

6 Q Pardon?

7 A No, not even now I don't.

8 Q Have there been many occasions, however, since then
9 that your mind has cleared and you felt that you were thinking
10 properly?

11 A Yes.

12 Q Now, specifically, Tom, on the 8th day of November,
13 1974, were you able to understand what was told to you and give
14 a correct responsible response to it yourself?

15 A I know that my rights was read to me but I'm not
16 sure what my response was.

17 MR. ROBINSON: You may examine.

18

19 CROSS EXAMINATION

20 BY MR. REMAKLUS:

21 Q Mr. Creech, you are not denying that you signed the
22 voluntary statement, are you?

23 A I'm not sure.

24 Q You are not sure of what?

25 A I don't remember signing it, I'll just say that.

1 Q But -- so you are not denying that the signatures
2 that Mr. Robinson showed you were your signatures?

3 A They just don't look like my signatures.

4 Q But, you do write differently for different times;
5 is that correct?

6 A Yes, sir.

7 Q Okay. Where were you November 7th, day before you
8 were arrested?

9 A In Boise, I believe.

10 Q Um-hmm. And who were you with?

11 A Carol.

12 Q Who else?

13 A Jim Marsh.

14 Q Anybody else?

15 A Some other kid.

16 Q Can you recall his name?

17 A Not right offhand.

18 Q Did you do some target practicing with a pistol,
19 .22?

20 A On the 7th?

21 Q Yeah.

22 A I don't think so.

23 Q When did you do the target practice?

24 A Sometime during my stay in Boise.

25 Q How many days were you down there in Boise?

1 A I'm not sure how many days I was there.
2 Q Where did you do your target practice?
3 A In the desert.
4 Q Who was with you?
5 A I'm not exactly sure who all was there.
6 Q You weren't alone, were you?
7 A No.
8 Q Was Carol along?
9 A Yes.
10 Q Was Guillaland there?
11 A Who?
12 Q Guillaland; is that his name?
13 A I'm not sure.
14 Q How about Jim Marsh?
15 A I think so.
16 Q Um-hmm. What did you do the day before you left
17 Boise?
18 A Nothing.
19 Q Well, just kind of give us a recount of your
20 activities that day.
21 A I couldn't do that because I don't even know.
22 Q How did you get out to the rest stop where
23 Stephen Rivers picked you up?
24 A James -- Jim Marsh.
25 Q He took you out there in his car?

1 A. Yes.

2 Q. Um-hmm. And Stephen Rivers picked you up there at
3 the rest stop?

4 A. Yes.

5 Q. And about what time was that?

6 A. Late, I don't know what time.

7 Q. Was it dark?

8 A. Yeah, it was pretty late.

9 Q. I'm having quite a little trouble hearing you, if
10 you'd speak up I would appreciate it.

11 A. It was pretty late at night.

12 Q. And when Stephen Rivers picked you up, then, was
13 there anybody with him?

14 A. I don't think so.

15 Q. And where did you -- did you and Carol then get
16 in the car with him?

17 A. Yes.

18 Q. How did he happen to pick you up there?

19 A. That's the guy that was in the car with us?

20 Q. Well, did he pull in there at the rest stop?

21 A. He was there already if it's the same guy you are
22 talking about.

23 Q. How did you happen to get the ride with him?

24 A. Asked him for it.

25 Q. Did you ask him?

1 A. Yes.

2 Q. Then when you left the rest stop who was driving?

3 A. I don't know.

4 Q. Did you drive?

5 A. I don't know if I did or not.

6 MR. ROBINSON: I'm having trouble hearing you also,

7 Tom.

8 THE WITNESS: I don't know if I drove or not.

9 Q. BY MR. REMAKLUS: Now, did all three of you ride

10 in the front seat of the car?

11 A. I'm not sure.

12 Q. Did you have this acid with you then?

13 A. Yes.

14 Q. And where had you gotten that?

15 A. From Lewiston, Idaho.

16 Q. You say you used the stuff quite a little bit?

17 A. Yes.

18 Q. Do you build up any tolerance to it?

19 A. Some.

20 Q. Do you carry on your daily activities while you are

21 taking this stuff?

22 A. Not usually when I'm taking acid.

23 Q. Well, have you learned to get along and function

24 while you take these drugs like you told us about?

25 A. I get along but I don't -- I'm not normal.

1 Q Did you stop anyplace along the road after you got
2 in the car with Stephen Rivers there at the rest stop?
3 A I don't know if we stopped anywhere or not.
4 Q Well, when you were arrested, do you remember that?
5 A Yes.
6 Q And do you know what city that was in?
7 A Glenns Ferry, I believe.
8 Q Now, how many officers were there there when you
9 first stopped?
10 A Only thing I remember is the shotgun.
11 Q Um-hmm. It was dark, wasn't it?
12 A Yes.
13 Q Did that make you nervous? The shotgun?
14 A Um-hmm.
15 Q Sure. You say you took some -- you took some acid
16 -- when was that? I didn't understand.
17 A Right before the officers -- when they put on the
18 light to stop us.
19 Q And where were you at that time?
20 A In the car by the window, the rider's side.
21 Q Carol was in the middle?
22 A I'm not sure if she was in the front or in the back
23 seat sleeping.
24 Q But you were in the front seat?
25 A Yes.

1 Q Then, after you were stopped out there -- how long
2 were you out there where the officers first stopped you?
3 A How long was it while they was keeping us there?
4 Q Um-hmm.
5 A I'm not sure how long it was.
6 Q Was it very long?
7 A It was quite awhile, they made a lot of calls.
8 Q How did they make these calls?
9 A On the radio in the car.
10 Q And where were you at this time that they were
11 making these calls on the radio?
12 A Standing beside the cruiser, in front of the cruiser.
13 Q Do you know who the officer was that had the
14 shotgun?
15 A Both of the officers had shotguns.
16 Q Do you know who they are?
17 A No, I know this one guy is the older guy.
18 Q Any of them here in the courtroom?
19 A I don't think so.
20 Q This was along in the middle of the night when you
21 were stopped down there?
22 A Yes.
23 Q And when did you make this statement that we've
24 been talking about?
25 A Not that night, it was the next day sometime. It

1 was in the afternoon when I made the statement.

2 Q It was -- you made the statement something about
3 being 2:00 a.m., but that's not correct, is it?

4 A No, it's not.

5 Q And who did you make the statement to?

6 A Jim Maxwell and Wess.

7 Q Is that Wess Woodall?

8 A Yes.

9 Q And anybody else there at that time?

10 A I'm not sure. I was handcuffed to Jim.

11 Q And was he there all the time?

12 A Yes, he was -- or I think he got up and left once
13 to go get Carol.

14 Q And then you were handcuffed to somebody else?

15 A Yes.

16 Q And was Wess still there?

17 A I believe Wess was there the whole time.

18 Q Um-hmm. Now, do you know where that was?

19 A I don't know what station it was at, no.

20 Q Do you know what city you were in?

21 A No, because they moved us around.

22 Q And when you were moved, did you move from
23 Glenss Ferry up to this other place?

24 A I'm not sure. We was at a little, small station
25 and, then, we went to where they -- someone else besides Wess

1 and Jim talked to us and then they took Carol somewhere and
2 took me somewhere else.

3 Then, the next day, I was taken somewhere else and
4 then Valley County that night.

5 Q Now, do you remember riding from one town to another
6 before the statement was taken?

7 A I don't know about towns, but I rode from one
8 jail to another one.

9 Q Yes.

10 May I approach the witness, Your Honor?

11 THE COURT: Yes.

12 Q BY MR. REMAKLUS: Handing you what's been marked
13 here for identification as Defendant's Exhibit B, now, you
14 remember this is what your attorney showed you a few minutes
15 ago?

16 A Yes.

17 Q Now, this is a statement that you made down there
18 that day; wasn't it?

19 A I'm not sure if it's my statement or not.

20 Q Um-hmm. Have you read it?

21 A I've read it.

22 Q You remember seeing it before, though, do you?

23 A I've seen a copy of it before.

24 Q You see where it says "TEC". Are those your
25 initials?

1 A That's my initials, yes.
2 Q And did you put those on there?
3 A I'm not sure.
4 Q And, now, on your signature there, now, that could
5 be your signature, is that right?
6 A Possibly.
7 Q And do you remember when Mr. Woodall was asking
8 you these questions?
9 A I remember him asking me about different things but
10 I'm not sure what I answered to them.
11 Q Well, would you say -- did Mr. Woodall say,
12 "Tom, we are investigating a double murder". Do you remember
13 that?
14 A I think so.
15 Q You knew that that was the topic -- or the subject
16 of the questioning; didn't you?
17 A That and the armed robbery.
18 MR. ROBINSON: I couldn't hear your response.
19 THE WITNESS: That and the armed robbery.
20 THE COURT: Mr. Remaklus, unless you are going to
21 actually have the witness -- need to have him point something
22 out, I'm going to ask you to sit at the table.
23 MR. REMAKLUS: Yes, I am, Your Honor.
24 Q BY MR. REMAKLUS: I'm going to leave this with you
25 and I have a copy that looks like it. I'll ask you some

1 questions.

2 MR. ROBINSON: Mr. Remaklus, Your Honor, may I have the
3 typewritten copy?

4 Thank you, sir.

5 Q BY MR. REMAKLUS: Mr. Creech, looking on the first
6 page of the statement there marked down there in the lower
7 right-hand corner it's marked "Page 1 of 7". And it also says
8 near the bottom "This statement was completed at 4:00 p.m.,
9 8th day of November, 1974".

10 There in the middle of the page it says "We went to
11 Lewiston from Spokane". Is that what you told Mr. Woodall?

12 A I'm not sure.

13 Q Is that what you did -- had you gone from -- to
14 Lewiston from Spokane?

15 A I don't understand what you are saying.

16 Q Well, had you and Carol been up to the World's Fair
17 in Spokane, Washington?

18 A No.

19 Q You hadn't been there at all?

20 A No.

21 Q And did you go, then, down to Lewiston, Idaho?

22 A When I come to Lewiston, Idaho, I come from
23 West Virginia.

24 Q And you were there at Lewiston, though, is that
25 right?

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A. Yes.

Q And you visited with Carol's mother?

A. Yes.

Q Well, let's go on back over the -- let's look on the second page.

There's information about a battery charger. Are you familiar with that?

A. Yes.

Q And would you say that that's true there as far as selling a battery charger, getting some gas for it?

A. I'm not sure if it's true or not.

Q Did you have any money when you were riding with Tom and Wayne?

A. Yes.

Q And who bought the gas?

A. We gave them money for gas.

Q Um-hmm. Then on Page 3 says here that about -- that someone in a blue and white Mazda picked you and Carol up, is that right?

A. I'm not sure.

Q Did you go to Jim Marsh's house -- was his wife pregnant?

A. Yes, his wife was pregnant.

Q Um-hmm. So, this is probably -- so here about going to his -- this material on the bottom of the Page 3 --

1 A. We didn't go to his house. We went to the truck
2 stop.

3 Q. Did you stay there at Jim Marsh's house when you
4 and Carol were in Boise?

5 A. For one night.

6 Q. Now, would you turn over to Page 4. See there at
7 the top, you said "We stayed at Jim's trailer house until last
8 night". Is that right?

9 A. He lived in a trailer house.

10 Q. And you stayed there -- you stayed at that trailer
11 house, is that right?

12 A. Yes.

13 Q. And is that right; that Rick drives a little
14 Corvair?

15 A. I'm not sure if I recall that.

16 Q. Um-hmm. And you remember it had Oklahoma plates?

17 A. I'm not sure.

18 Q. Do you remember when Wess was taking this statement
19 down therewith you that he -- he printed this out -- each time
20 that he printed all these pages out that you remember that?

21 A. I know he was writing.

22 Q. Um-hmm. And these, again, are your initials "TEC"
23 on Page 5; aren't they?

24 A. Are you asking me if I signed those initials, or
25 are you asking me if those are my initials?

1 Q I asked you if they are your initials.
2 A They are my initials, but I'm not saying that I
3 signed them.
4 Q But, you are not denying it either, are you?
5 A No, I'm not.
6 Q Directing your attention to Page 6, is the
7 information given in there on Page 6, is that substantially
8 correct?
9 A Which part?
10 Q Well, let's start, I guess, to make a sentence
11 we'd have to go over to Page 5 and start two lines from the
12 bottom.
13 A I'm not sure about making that statement.
14 Q Well, let's keep on Page 6 down there about five
15 or six lines, says "I went to Jackson, Kentucky to see my
16 mother, couldn't find her. I saw my uncle Elmer Turner".
17 Are those statements correct?
18 A I was in Kentucky and I did see my uncle.
19 Q Was he -- is he a police officer?
20 A Three of my uncles are police officers.
21 Q Um-hmm. And, then, down at the bottom of the page
22 there says "I pulled two armed robberies in 1969 and two and
23 a half years in Ohio". Is that true?
24 A Unarmed.
25 Q You say what? Unarmed?

1 A. Unarmed robberies.

2 Q. Um-hmm. Did you do two and a half years there in
3 Ohio?

4 A. On July of '69 until December 2nd of '70.

5 Q. Um-hmm. Then over on Page 7 says there you were
6 extradited to Tucson, Arizona on a first degree murder charge
7 and were acquitted. Is that true?

8 A. Yes.

9 Q. You think the time of day is about right on the
10 statement where it says on Page -- on the first page there it
11 started -- says "2:00". My copy doesn't show whether it's
12 a.m. or p.m. This was taken during the daylight; wasn't it?

13 A. Sometime during the day, yes.

14 MR. REMAKLUS: Yes. I have no further questions of
15 Mr. Creech. Mr. Thomas may have a couple questions, Your Honor.

16 THE COURT: Well, to keep this orderly I'm going to
17 require one counsel to do all the examining.

18 MR. THOMAS: If we could have a moment, then, Your Honor.

19 THE COURT: Yes.

20 MR. ROBINSON: Could we have a short break, Your Honor?

21 THE COURT: Yes, we'll take a ten-minute recess at this
22 time.

23 MR. ROBINSON: Thank you very much, sir.

24 (Recess taken.)

25 THE COURT: All right, continue.

1 Q BY MR. REMAKLUS: Mr. Creech, do you still have the
2 statement of November 8th there before you?

3 A Yes, sir.

4 Q Directing your attention to the first page, about
5 in the middle of the page it says "We stopped to go to the
6 bathroom. Wayne tried to rape Carol and put his hands on her
7 and so forth".

8 Now, do you remember telling that to Mr. Woodall
9 and Mr. Hill?

10 A I'm not sure.

11 Q Is it a fact that he tried to do that?

12 A Yes.

13 MR. REMAKLUS: Mark State's Exhibit 1.

14 (State's Exhibit No. 1 marked for identification.)

15 MR. REMAKLUS: May I approach the witness, Your Honor?

16 THE COURT: Yes.

17 Q BY MR. REMAKLUS: Would you look at what's been
18 marked for identification as State's Exhibit 1, please.

19 Do you recognize that document, Mr. Creech?

20 A Yes.

21 Q Is that a poem that you wrote for Mrs. Maxwell?

22 A Yes.

23 Q And is that your signature there at the bottom of
24 it?

25 A Yes.

1 Q Did you sign it?
2 A Yes.
3 Q That was up at Cascade on May 22nd; wasn't it?
4 A Yes.
5 Q And did you put the date on it, Mr. Creech?
6 A Yes.
7 MR. REMAKLUS: I'd offer State's Exhibit 1.
8 MR. ROBINSON: I have no objection, Your Honor.
9 THE COURT: One will be admitted.
10 (State's Exhibit No. 1 admitted into evidence.)
11 Q BY MR. REMAKLUS: You've had several conversations,
12 haven't you, with Bud Mason?
13 A Yes, sir.
14 Q Do you remember telling Bud about going target
15 shooting there in Boise?
16 A I'm not sure.
17 Q Do you remember telling Bud that you said Rick
18 wasn't with us when we went target shooting, just me and
19 Jim Marsh and my girl friend, Carol?
20 A I'm not sure.
21 Q Pardon?
22 A I'm not sure who all was there.
23 Q You are not sure who all was there when you were
24 target shooting?
25 A Right.

1 Q Also you remember when Jim Marsh was angry about
2 Rick eating there and not doing housework, or taking care of
3 the place?

4 A Yes.

5 Q You told Bud about that, didn't you?

6 A I think so.

7 MR. REMAKLUS: I have no further questions.

8
9 REDIRECT EXAMINATION

10 BY MR. ROBINSON:

11 Q Tom, while incarcerated how long have you been
12 acquainted with both Wess and Jim Maxwell?

13 A Well, I don't know Wess that good, but talked to
14 Jim a few times.

15 Q Now, particularly on the 8th of November did you
16 immediately establish a rapport with Jim Maxwell and Wess and
17 you remember them clearly and your contact with them on that
18 day?

19 A I'm not sure what the date was, but I remember
20 talking to them.

21 Q You remember talking to them?

22 A Yes.

23 Q Now, I notice the date on this poem you wrote
24 regarding -- is that Jim Maxwell's wife, the lady that's sitting
25 here?

1 A. Yes.

2 Q. I notice the date was October the 3rd of 1975.
3 Was that just this year, just today -- is that today's date?

4 A. I'm not sure what the date is.

5 MR. ROBINSON: May I --

6 MR. REMAKLUS: I think he's referring to the date put
7 on there by the Clerk for identification.

8 MR. ROBINSON: Oh.

9 Q. BY MR. ROBINSON: Handing you State's Exhibit No. 1,
10 below your signature if you would take it, please, do you have
11 the date on there of May the 22nd of 1975?

12 A. Yes.

13 Q. That is the date you wrote that poem?

14 A. Yes, I think so.

15 Q. And was your mind clear at that time?

16 A. It was when I was going to trial.

17 Q. As a matter of fact, that was the day that there
18 was a mistrial declared and this Court granted a motion for
19 change of venue; isn't it?

20 A. I'm not sure what date it was.

21 Q. But that's the date that you wrote that poem?

22 A. I wrote this poem, yes.

23 MR. ROBINSON: I have no further questions, Your Honor.

24 MR. REMAKLUS: I have no further questions, Your Honor.

25 THE COURT: You may step down. Just hand that Exhibit

1 to the Clerk.

2 MR. ROBINSON: I have no other evidence to present on
3 that matter, Your Honor.

4 THE COURT: I'll hear any rebuttal evidence you have,
5 Mr. Remaklus.

6 MR. REMAKLUS: Yes.

7
8 GEORGE M. MENZIK,
9 a witness herein, having been first duly sworn, took the stand
10 and testified as follows:

11
12 DIRECT EXAMINATION

13 BY MR. REMAKLUS:

14 Q State your name, please.

15 A George M. Menzik.

16 Q Where do you live, Mr. Menzik?

17 A Glenss Ferry, Idaho.

18 Q Your occupation?

19 A I'm a police officer with the City of Glenss Ferry.

20 Q And how long have you been so employed?

21 A One June of 1974, sir.

22 Q And you are still on duty? You'd be working today
23 if you weren't here, is that right?

24 A Yes, sir, I would.

25 Q Um-hmm. Have you had any particular police

1 schooling, Mr. Menzik?

2 A. Yes, I'm a certified police officer in the State of
3 Idaho.

4 Q And did you go to the Police Academy?

5 A No, sir, I attended the University of Boise through
6 the military and it was recognized by the Post Academy,
7 resulting in my certification.

8 Q And did you -- you are soon to go to work for the
9 Elmore County Sheriff's Department, is that right?

10 A. Yes, sir, I am.

11 Q What have your duties consisted of since you've
12 been employed as a police officer there at Glenns Ferry?

13 A. Enforcing the laws of the City, State and County of
14 Elmore.

15 Q You do patrol work?

16 A. Yes, I do.

17 Q Um-hmm. Have you had any experience with drugs?

18 A. I've been to 16 hours of drug field testing through
19 the -- offered by the State, yes, sir.

20 Q Um-hmm. And have you had any other training in
21 drugs?

22 A. No, sir, I haven't.

23 Q Have you had occasion to make your arrests where
24 drugs were involved, Mr. Menzik?

25 A. Yes, sir, I have.

1 Q And do you have any idea of how many such arrests
2 that you've been involved in?

3 A I would say approximately a half dozen, sir.

4 Q Do you recall what kind of drugs were involved?

5 A Marijuana, sir.

6 Q What is your age, Mr. Menzik?

7 A Forty, sir.

8 Q Directing your attention to the early morning hours
9 of November 8th, 1974, were you on duty there at Glenns Ferry,
10 Idaho on that date?

11 A No, sir, I was not.

12 Q And were you there at that time?

13 A Yes, sir, I was.

14 Q Were you employed at that time by the City of
15 Glenns Ferry?

16 A Yes, sir, I was.

17 Q Did you have occasion to go on duty unexpectedly
18 that night?

19 A Yes, sir, I did.

20 Q What was that?

21 A Officer Hill who was on duty phoned me at my home
22 and requested a back-up on -- he had some problems.

23 Q And that was William Hill?

24 A Yes, sir, William Hill.

25 Q Is he an officer for the City of Glenns Ferry?

1 A Yes, sir, he is.
2 Q Is he at the Post Academy right now?
3 A Yes, sir, he is.
4 Q As a matter of fact, this is his last day; isn't it?
5 A Yes, sir, I think -- well, today --
6 MR. ROBINSON: Objection to the materiality, Your Honor.
7 THE COURT: Sustained.
8 Q BY MR. REMAKLUS: You responded to a call from
9 Officer Hill that night?
10 A Yes, sir.
11 Q About what time of day or night was it?
12 A Approximately 2:00 a.m., sir, 2:15 a.m.
13 Q And what, if anything, did you do in response to
14 that call?
15 A I immediately put my clothes on and headed for the
16 police station.
17 Q And did you then meet with Officer Hill?
18 A Yes, sir, I did.
19 Q And then what did you do, if anything?
20 A Parked my car at the police station, got into the
21 police car and proceeded south -- I'm sorry, proceeded east
22 down First Street.
23 Q And then what, if anything, did you do?
24 A We were following a vehicle -- taillights of a
25 vehicle up ahead of us. We gained speed on the vehicle and

1 continued following it around the curve up the hill.

2 Q Did you stop the vehicle?

3 A Yes, sir, we did, up on top of the hill where the
4 east loop of Glenns Ferry and Highway 30 intersects.

5 Q And did you get out of your car then -- just tell
6 us what you did, Officer.

7 A Yes, sir. At this time I had a shotgun which was
8 released from the electronic rack in the car, opened the car
9 door, stepped out and covered the vehicle in front of us.

10 The vehicle parked on the right-hand side of the
11 road, the driver of the vehicle got out. I kept the vehicle
12 covered.

13 Q And then in the sequence of events, did you then
14 see the defendant Tom Creech?

15 A Yes, sir, I did.

16 Q And where was he?

17 A He was on the right-hand side of the car in the
18 front seat.

19 Q And is that one and the same person who is seated
20 here at counsel table with Mr. Robinson?

21 A Yes, sir, it is.

22 Q What, if anything, did you do at that point,
23 Officer?

24 A At that point I went over and opened the car door
25 and had the shotgun in my right hand. I advised Mr. Creech

1 and Carol, who were still in the automobile, to put their
2 hands on top of their heads and to step out of the car very
3 carefully.

4 Q Did they do so?

5 A Yes, sir, they did.

6 Q And what then happened, if anything?

7 A I made them put their hands up on the car, spread
8 their feet apart and stay there while I covered them with the
9 shotgun.

10 Q And was any search of Mr. Creech made at that time?

11 A Yes, sir, Officer Hill came around and
12 pat-searched both suspects for weapons.

13 Q Then what happened, if anything?

14 A We took them back to our police car and put them
15 in the back seat of the police car. I placed them under
16 arrest, Officer Hill read them their rights from a little card
17 he has on the Miranda Warning.

18 Q Do you recall what he told them at that time and
19 place?

20 A Yes, sir. He advised them that they had the
21 absolute right to remain silent; that they had a right to have
22 an attorney, have him present while they were being questioned.
23 If they could not afford a lawyer, one would be hired, or may
24 be hired to represent them at no cost; they had an absolute
25 right not to make any statements.

1 Q Would you just -- now, was this statement made to
2 all three of the occupants of the vehicle?

3 A Yes, sir, they were in the back seat of the police
4 car.

5 Q And they are the ones that you had removed from the
6 other car you stopped, is that right?

7 A Yes, sir.

8 Q Would you describe the manner in which Mr. Hill
9 gave those warnings?

10 A Yes, sir. He had a little card with the warnings
11 on it. After each one of the questions was asked he asked if
12 they understood their rights and they all indicated either
13 "yes" or nodded their head.

14 Q And were they -- they were in a position where they
15 were visible to you at that time?

16 A Yes, sir. I was in the front right-hand side of
17 the police car and turned around and looking at all three of
18 them.

19 Q And did you have an opportunity at that time to
20 observe Mr. Creech?

21 A Yes, sir, I did.

22 Q Could you describe his general appearance?

23 A He was completely cooperative at this time, he
24 answered the questions that were asked to him and had no
25 problems.

1 Q Did you have occasion to talk with him?

2 A At that time, no, sir.

3 Q Well, then what happened next after they were
4 in the police car and warnings were given?

5 A I went back to the vehicle and found a black bag
6 and brought it up to the police car and asked if anybody owned
7 it.

8 They -- Mr. Rivers indicated it wasn't his. I
9 opened it up, there was a weapon on the top of the bag, it was
10 in a brown -- it was a pistol.

11 At that time I closed the bag right back up and
12 I got the suspects back out of the car one at a time and I
13 patted them down real good for weapons this time.

14 Q Did you find any?

15 A Yes, sir. I found a knife on Mr. Creech, a pocket
16 knife.

17 Q Did you remove any other things from his pockets
18 at that time?

19 A No, sir, I did not.

20 Q Then did you find any bottles or containers of any
21 kind on him?

22 A No, sir.

23 Q What then happened, if anything?

24 A Then we went down to the police station. I drove
25 Mr. Rivers' automobile down to the police station and

1 Officer Hill, with the three suspects, followed us down to the
2 police station.

3 Q And then what happened, if anything?

4 A We got the suspects out of the car into the police
5 station, they were seated in the police station. Officer Hill
6 was behind the desk and I stood by the front door.

7 Q Um-hmm.

8 A At this time Officer Hill got everything out of
9 Mr. Creech's pockets, had them laying on the desk, there was
10 some miscellaneous items there.

11 I looked at the driver's license that was given to
12 Officer Hill by Mr. Creech. I recognized that the driver's
13 license picture was not the same as the suspects'.

14 Q And what, if anything, did you do then?

15 A I looked at the picture real good and I looked at
16 Mr. Creech, looked right at him to try to identify the two, to
17 make sure they were not the same person.

18 I looked him right in the face.

19 Q And would you describe his appearance at that time
20 for us, please.

21 A Yes, sir. His eyes were slightly bloodshot, he
22 seemed quite coherent at the time. He answered all the questions
23 and he sat there, he was a little nervous, probably from being
24 arrested.

25 Q Did you have an opportunity to observe his manner

1 of speech?

2 A Yes, sir. He was -- he had no trouble speaking
3 whatsoever. He didn't slur or anything, he answered the
4 questions directly when they were asked him. I looked at the
5 driver's license and I said "This is not you. What is your
6 name?"

7 He said "My name is Tommy Turner".

8 Q And did you have any other conversations with him
9 then?

10 A At that time? No, sir.

11 Q Then what else -- or what happened next,
12 Officer Menzik?

13 A Then Detective Freeman arrived approximately that
14 time from Mountain Home and I took Mr. Rivers out and looked
15 into the automobile with Mr. Rivers and Detective Freeman was
16 in the police station with Officer --

17 Q Is that Detective Jack Freeman of the Elmore County
18 Sheriff's office?

19 A Yes, sir, it is.

20 Q And do you know about what time of day it was by
21 then?

22 A Approximately 3:40 a.m., sir.

23 Q And was Mr. Creech then transported up to
24 Mountain Home?

25 A Yes, he was, sir.

1 Q And did you ride with him?

2 A Yes, sir. He was placed in Detective Freeman's
3 automobile in the back and I rode with Officer Freeman.

4 Q Was there anybody else in the car?

5 A Carol Spaulding was also in the automobile, yes,
6 sir.

7 Q Was she and Mr. Creech in the back seat?

8 A Yes, sir, they were.

9 Q And did you have any conversations with Mr. Creech
10 from Mountain -- from Glenns Ferry up to Mountain Home?

11 A No, sir, I didn't.

12 Q Did you overhear him engaged in a conversation?

13 A Yes, sir. He and Carol were saying something but
14 I didn't pay much attention to what they were saying, sir.

15 Q And did you have an opportunity to observe his
16 manner of speech at this time?

17 A Yes, sir, I did.

18 Q And how was that?

19 A He was speaking quite coherently, he was speaking
20 low. I couldn't understand what they were saying, but I didn't
21 hear any slurred or anything wrong with his speech.

22 Q Did you have a chance to observe his demeanor
23 and his actions at this time?

24 A Yes, sir. He was still quite calm, just set there
25 and they were talking about something.

1 Q How long did you suppose it took you to get from
2 Glenns Ferry over to Mountain Home that morning?

3 A I'd say approximately 20 minutes, 25 minutes.

4 Q Then what -- how far is that, Officer; do you
5 recall offhand?

6 A Twenty-six miles, I think.

7 Q When you arrived at Mountain Home then what
8 happened? What did you do?

9 A Detective Freeman and Officer Hill went upstairs
10 with Mr. Creech, I went downstairs to the Sheriff's office
11 with Carol and Mr. Rivers and I stayed down there observing
12 them.

13 Q Were you present during any further searches of
14 the person of Carol --

15 A No, sir, I was not.

16 Q Did you have anything more to do with Mr. Creech
17 then on that day?

18 A No, sir. I never saw him again after that.

19 Q Is this the first time you have seen him since
20 then?

21 A Yes, sir.

22 Q Have you had an opportunity to observe his
23 demeanor here today?

24 A Yes, sir, I have.

25 Q Do you see any substantial difference between the

1 way he acted then and the way he's acting now?

2 A. No, sir. He seems, basically, the same. He was
3 a little fidgety, but basically the same, he was quiet, spoke
4 low.

5 MR. REMAKLUS: I have no further questions.

6
7 CROSS EXAMINATION

8 BY MR. ROBINSON:

9 Q What time of the day was it, Officer Menzik, that
10 the arrest took place?

11 A. It was approximately 2:45 a.m., sir.

12 Q All right. I believe you testified your experience
13 ran to approximately six arrests for marijuana, smoking pot;
14 is that correct?

15 A. I think probably half a dozen, sir.

16 Q Have you ever had any occasion to observe a person
17 who is taking heroin, cocaine, acid?

18 A. Definitely that I knew, no, sir.

19 Q Do you know, personally, yourself, know what
20 effect that has upon either the bloodshotness of the eye,
21 dilation of the pupils or slurring of speech?

22 A. Just what they told us while we were in school, sir.

23 Q Who told you while you were in school?

24 A. It was a State -- I don't even remember what his
25 name was, there was a State Drug School for field testing of

1 drugs that I attended.

2 Q All right. And do you know, personally know,
3 whether or not there is any speech slurring, dilation of eyes,
4 that comes about as a result of popping the different pills;
5 the "uppers" and "downers" or the use of windowpane?

6 A Just what I read, sir.

7 Q Now, as I understand what your testimony has been,
8 you assisted in the actual arrest of Tom Creech, Carol Spaulding
9 and this fellow, Rivers, on the outskirts there of Glenns Ferry;
10 is that correct?

11 A Yes, sir.

12 Q And it was dark there at the time?

13 A Yes, sir.

14 Q And the only light in the area was that of the
15 lights on the vehicles?

16 A No, sir, there was overhead lights hanging on the
17 highway.

18 Q That's right on the highway?

19 A Yes, sir, right on the main highway at the
20 intersection there.

21 Q Those are those blue arc lights?

22 A No, sir, the white -- they are the old-fashioned
23 lights.

24 Q Oh, all right. And, then, you took them back to
25 the police station there in Glenns Ferry; is that correct?

1 A. Yes, sir.
2 Q. And how long were you there?
3 A. I think we probably left there approximately 4:15,
4 4:30, sir.
5 Q. So, about an hour and a half that you were in
6 Glenns Ferry?
7 A. Yes, sir.
8 Q. And besides the police station did you go to any
9 other place; Magistrate's Court or anything of that nature
10 with the three persons?
11 A. In Glenns Ferry, sir?
12 Q. Yes.
13 A. No, sir.
14 Q. As a matter of fact there isn't any Magistrate's
15 Court there, is there?
16 A. No, sir.
17 Q. During that hour and a half that you were in
18 Glenns Ferry, how much of that time was out on the road at the
19 actual scene of the apprehension?
20 A. I would say approximately 15 minutes, sir.
21 Q. And were you -- as a matter of fact, you and
22 Officer Hill, making radio contact while right there at the
23 scene of the arrest?
24 A. Yes, sir.
25 Q. Who did you contact?

1 A. I didn't contact, sir. Officer Hill was making the
2 radio calls.

3 Q. And during this time you had the three suspects
4 handcuffed and under arrest?

5 A. Yes, sir, they were in the back of the car.

6 Q. All right. How long does it take to get from the
7 scene of the arrest back to the police station in Glenns Ferry?
8 Matter of five minutes?

9 A. Probably two or three minutes, sir.

10 Q. All right. And you remember leaving Glenns Ferry
11 at approximately 4:15?

12 A. Yes, sir, approximately 4:15.

13 Q. So, for a period of an hour, hour and ten minutes,
14 were you talking with the three parties?

15 A. Observing and talking to them, sir.

16 Q. And during this period of time did you and
17 Officer Hill go outside to the Rivers' vehicle and recover
18 some marijuana and other pharmaceuticals?

19 A. No, sir.

20 Q. Did you ever recover --

21 A. I personally? No, sir.

22 Q. Do you know of any marijuana and pharmeceuticals
23 that were recovered from Mr. Rivers' car?

24 A. Just what I heard.

25 Q. From whom?

1 A. Officer Hill told me.

2 Q. Did you see any of this material?

3 A. No, sir.

4 Q. Where was it recovered? In Glenns Ferry or
5 Mountain Home?

6 A. In Mountain Home, sir.

7 Q. While in Glenns Ferry didn't you relate that there
8 had been a search of the Rivers' car?

9 A. I asked Mr. Rivers if I could look in his car,
10 yes, sir; we were looking for a coat in particular.

11 Q. Pardon?

12 A. I was looking for a coat in particular.

13 Q. Okay. And how long were you searching through the
14 car there?

15 A. I didn't search the car. I looked in the back
16 seat. The items that I was looking for were in the back seat
17 of the car there on the floor; the coat was there and I just
18 left it there. There was a sleeping bag and a pillow, I think,
19 and I left it there and took the coat in the police station.
20 I didn't look in the car any further, sir.

21 Q. All right. And that took approximately how long?

22 A. Three or four minutes.

23 Q. Now, during that remainder of an hour and five
24 minutes, what other activities did you participate in besides
25 just sitting and observing the three suspects?

1 A. While in Glenns Ferry, sir?
2 Q. Yes, sir.
3 A. None.
4 Q. So, an hour and five minutes you did have an
5 opportunity to observe the three parties that you had arrested?
6 A. Yes, sir, I had.
7 Q. And during this period of time would you describe
8 Tom Creech's attitude as docile, non-resistant sort of attitude
9 that he projected?
10 A. He was cooperative, he answered the questions that
11 -- only couple of questions I asked him, what his name was,
12 and he told me Tom Turner.
13 Q. All right. And did you do the same questioning
14 with both Carol Spaulding and this Rivers?
15 A. No, sir.
16 Q. Just with Mr. Creech?
17 A. Right, because I saw the driver's license.
18 Q. All right. What did you observe about
19 Carol Spaulding's condition?
20 A. She seemed a little upset, she seemed scared. She
21 was crying at one time.
22 Q. Was she under the influence of drugs?
23 A. I don't know, sir.
24 Q. Pardon?
25 A. I couldn't really honestly tell you yes or no.

1 Q How about Mr. Rivers? Can you say yes or no whether
2 he was under the influence at that time?

3 A He appeared to be quite calm through the whole
4 thing. He was a little shook up, but as far as him setting
5 there and answering the questions that Officer Hill asked him,
6 we had no problem whatsoever, sir.

7 Q And can you testify here as to whether or not
8 Tom Creech was or was not under the influence of drugs at that
9 time?

10 A In my opinion, sir?

11 Q Yes.

12 A Yes, sir, I can.

13 Q And what is your opinion?

14 A My opinion is that he wasn't, sir.

15 Q And then you drove both -- or all three of the
16 parties to Mountain Home?

17 A No, sir. Just Mr. Creech and Carol Spaulding was
18 in Officer Freeman's car, sir, and myself.

19 Q Officer Freeman was with you?

20 A Yes, sir.

21 Q And both of you were occupying the front seat?

22 A Yes, sir, we were.

23 Q And Mr. Rivers traveled to Mountain Home with
24 Officer Hill?

25 A Yes, sir.

1 Q As I understand your testimony, as soon as you got
2 to Mountain Home you split company with Mr. Creech and were
3 with Rivers and Spaulding?

4 A Yes, sir.

5 MR. ROBINSON: I have no further questions, Your Honor.

6 MR. REMAKLUS: I have nothing further of this witness.

7 THE COURT: You may step down.

8 MR. REMAKLUS: Call Detective Freeman, please.

9
10 JACK FREEMAN,
11 a witness herein, having been first duly sworn, took the stand
12 and testified as follows:

13
14 DIRECT EXAMINATION

15 BY MR. REMAKLUS:

16 Q State your name, please.

17 A Jack Freeman.

18 Q And where do you reside, Mr. Freeman?

19 A Mountain Home, Elmore County, Idaho.

20 Q And what is your occupation?

21 A Detective.

22 Q And by whom are you employed?

23 A Sheriff's Department, Elmore County.

24 Q And how long have you been a detective with the
25 Sheriff's office there?

1 A. Between -- oh, I'd say approximately two and a
2 half years as Detective.

3 Q. And before going with the Mountain Home Sheriff's
4 office, have you had prior police work, Mr. Freeman?

5 A. Yes, sir.

6 Q. Would you tell us what it is, please.

7 A. Yes, sir. I was with Owyhee County for
8 approximately five and a half to six months prior to going
9 with Elmore County.

10 Prior to Owyhee County I had 20 years military
11 police experience with the Air Force.

12 Q. And what did you do in Owyhee County?

13 A. I ran regular patrol and approximately two weeks
14 after I started I was appointed Chief Deputy.

15 Q. And that lasted until you went over to Mountain
16 Home, is that right?

17 A. Yes, sir.

18 Q. Now, have you had any training in -- with drugs,
19 Mr. Freeman?

20 A. Yes, sir.

21 Q. And what has that been?

22 A. I started off and received on-the-job training
23 for approximately three months with Merrill Kelly who is now
24 one of the original supervisors with the State Drug Enforcement.

25 After that I attended and completed and received

1 a certificate from a school put on for the State Narcotics
2 Agents. I attended that in Boise.

3 After that I attended, completed and received a
4 certificate from the Federal Narcotics which was then called
5 E and DD. This was also conducted in Boise and I've attended
6 numerous seminars and short courses in drug abuse and narcotics
7 since then.

8 Q And what are your duties there in Mountain Home?
9 Which detail are you assigned to in Mountain Home?

10 A My primary duties consist of drug enforcement and
11 investigation of felony incidents within the County and also
12 have been appointed by the Director of Law Enforcement for
13 drug laws throughout the State of Idaho. As far as I know
14 there's only two of us that are so designated from individual
15 Sheriff's Departments.

16 Q Do you have a drug problem in Elmore County?

17 A Yes, sir.

18 Q What do you attribute that to?

19 A Well, we kind of think due to the Mountain Home
20 Air Force Base being there with influx of people throughout
21 all parts of the United States.

22 Q What's your normal -- do you know what the normal
23 population, or how many men on duty out at the base?

24 A It -- oh, I could only estimate this from my past
25 experience and I would say approximately at the base would be a

1 population of around 6,000.

2 Q You say there is a turnover?

3 A Yes, sir, real continuous turnover at the base.

4 Q Have you been involved, during your employment
5 there in Mountain Home in cases involving drug arrests?

6 A Yes, sir.

7 Q Do you have any idea of how many of these cases
8 that you've been involved in?

9 A I could only estimate. I would estimate approximately
10 300.

11 Q Have you had any experience with LSD?

12 A Yes, sir.

13 Q Is that what we're talking about, "windowpane acid",
14 is this LSD?

15 A Yes, sir.

16 Q What is that drug, Officer Freeman?

17 A LSD is Lysergic acid Diethylamide, or any of its
18 derivatives.

19 Q Now, have you in your drug training that you've
20 described, have you had training in as to the effects of LSD?

21 A Yes, sir.

22 Q Have you had occasion to observe the effects of
23 LSD?

24 A Yes, sir.

25 Q What are the -- if a person uses LSD, what do you --

1 what are the symptoms, or what do you look for?

2 A. The symptoms can vary from person to person.
3 However, we do have basic things that we do look for. One is
4 a disoriented-type person, dilated eyes, drowsiness, a person
5 that's hallucinating or gives indications that they are
6 hallucinating. There's numerous others that run right along
7 the same line.

8 Q. Definite behavioral aspects, then, that you would
9 look for, is that right?

10 A. Yes, sir.

11 Q. Now, directing your attention to the 8th day of
12 November, 1974, were you employed on that date by the
13 Elmore County Sheriff's office?

14 A. Yes, sir.

15 Q. And did you have occasion to go to Glenns Ferry?

16 A. Yes, sir.

17 Q. Was that in response to a call from
18 Officers Hill and Menzik of the Glenns Ferry City Police
19 Department?

20 A. Yes, sir, through our dispatcher.

21 Q. Yes, um-hmm. Do you know about what time of day
22 you got down there to Glenns Ferry, Mr. Freeman?

23 A. Yes, sir.

24 Q. About when was that?

25 A. This would have been approximately 3:40 a.m.

1 Q And tell us what you did, if anything?

2 A Well, I received -- I just received extremely
3 brief, sparse-type information about what the call was about
4 from the dispatcher; this being normal procedure in our area
5 because none of us go to the call like this without having
6 some idea of what we're up against.

7 This being the wee hours of the morning, I was
8 on call and I consequently talked back and forth with the
9 dispatcher enroute to Glenns Ferry. I did run code. Upon my
10 arrival there I was met by Patrolman William Hill and
11 George Menzik. Present in the room was three other
12 individuals that was later to be identified to me to be
13 Mr. Creech, a young lady by the name of Miss Spaulding and
14 another gentleman by the name of Mr. Rivers.

15 Q And where is this -- is Mr. Creech present in the
16 courtroom here today?

17 A Yes, sir.

18 Q Is he seated at counsel table with Mr. Robinson?

19 A Yes, sir, to counsel's left.

20 Q And where did you see them, Mr. Freeman?

21 A This was inside the Police Department at
22 Glenns Ferry.

23 Q And what, if anything, did you do from that point
24 on?

25 A Well, upon my arrival there I received a quick,

1 short briefing from both the officers as to what had
2 transpired; what had been picked up at that time and, then,
3 there was an interruption by Patrolman Hill placing a telephone
4 call to a guy that I later found to be Deputy Jim Maxwell.

5 Q Did you have any conversations with the defendant,
6 Thomas Creech, at that time?

7 A Very little at that time.

8 I said a few words to him in regards to the
9 identification that he had and I advised them all that we would
10 be transporting them to the Elmore County Sheriff's office in
11 Mountain Home and we began to make arrangements then to
12 transport them. I believe at that time we did obtain a
13 consent to search, I believe, from Mr. Rivers on the car.

14 Q Did you give any of the Miranda Warnings down
15 there at that time, Officer Freeman?

16 A I believe I did to Mr. Rivers prior to getting
17 his consent to search, but not to Mr. Creech or Miss Spaulding.

18 Q Now, did you have an opportunity there at
19 Glenns Ferry to observe Mr. Creech? By that I mean his actions,
20 his manner of speech?

21 A Just briefly.

22 Q And did you -- what, if anything, did you observe
23 about Mr. Creech?

24 A Well, he just seemed to -- a normal individual that
25 had been picked up as a suspect. I noticed nothing unusual

1 about him except his dress and condition of dress and condition
2 of his appearance due to unkemptness, but keeping in mind the
3 wind was blowing and raining, this would also have been a
4 normal --

5 Q Did you look at his eyes that night?

6 A Not at that particular time I didn't.

7 Q What did you do then next there at Glenns Ferry,
8 Mr. Freeman?

9 A They were prepared for -- I collected some of the
10 evidence that was there, we placed it in the trunk of my
11 County vehicle. The subjects were -- two of the subjects were
12 placed in the back seat of my car, Miss Spaulding sitting
13 in the center portion of the seat, Mr. Creech in the right
14 rear of the automobile and Patrolman Menzik in the right-front
15 of the vehicle with me driving.

16 Q Did you drive the car, then, from Glenns Ferry up
17 to Mountain Home?

18 A Yes, sir.

19 Q Did you have any conversations with the defendant
20 enroute?

21 A There was some conversation about a cigarette but
22 other than that I don't remember any actual face-to-face
23 conversations with him as I was driving.

24 Q Did you observe his manner of speech?

25 A I could hear the talk back there but, as far as

1 what was being said, I couldn't understand.

2 Q How long did it take you to get up to Mountain
3 Home, Jack?

4 A I would say approximately 25 minutes, maybe 30 at
5 the outside.

6 Q And when you arrived there at Mountain Home where
7 did you go?

8 A We entered the Sheriff's office, all of us, and
9 then, from there obtained the key, went upstairs to the
10 Commissioners' Conference Room that we do -- or did at that
11 time use for interviews.

12 Q Does "interview" cover interrogation of suspects
13 as well?

14 A Yes, sir.

15 Q And at this time did you have any conversations
16 with Mr. Creech?

17 A Yes, sir, I did.

18 Q And did you give him the warnings?

19 A Yes, sir.

20 Q And how did you do that, Mr. Freeman?

21 A I read to each of the three suspects from a card
22 that I carry with the Miranda Warning written on it.

23 Q Can you tell us the substance of that and manner
24 in which you delivered the substance to them?

25 A The basic substance, without reading the card, is

1 advising the suspects, or subjects, prior to questioning that
2 he does have the right to remain silent, anything that he says
3 can and will be used against him in a court of law, that the
4 subject has the right to have an attorney and have that
5 attorney present during any questioning. If he can't afford
6 to hire an attorney one would be appointed at public expense
7 and that if he did desire to answer any questions he could
8 quit at any time if he so desired.

9 Q And this was the information you gave Mr. Creech
10 and the others, is that right?

11 A Yes, sir.

12 Q And then what then did you do, if anything?

13 A At that time I presented each with a notification
14 of rights of waiver. This is a standard form that we use in
15 our area; which gives a written resume of the rights as
16 required under Miranda, also gives the same rights in a
17 numerical order. At the end of each warning there is a place
18 for initials. Then, down in the lower portion there is a
19 continuation of the waiver and, then, a place for signature
20 at the bottom giving the place, date and time and places for
21 two witnesses to sign.

22 MR. REMAKLUS: Could I have this marked? This would be
23 State's 2, I guess.

24 (State's Exhibit No. 2 marked for identification.)

25 MR. REMAKLUS: May I approach the witness, Your Honor?

1 THE COURT: Yes.

2 Q BY MR. REMAKLUS: Mr. Freeman, handing you what's
3 been marked for identification as State's Exhibit No. 2, would
4 you inspect it, please?

5 A Yes, sir.

6 Q Is that a Notification of Rights that you
7 customarily use in your department?

8 A Yes, sir.

9 Q And were those rights, as printed there, given by
10 you to Tom Creech as you have just testified?

11 A Yes, sir.

12 Q And at the end of each question there's a blank
13 in the -- I notice initials of "T.T." are there; is this
14 correct?

15 A Yes, sir.

16 Q And who placed them there?

17 A Mr. Creech.

18 Q And the signature there on the bottom of the
19 page; what is the name that appears there, Mr. Freeman?

20 A "Tom Turner".

21 Q And who affixed that signature?

22 A Mr. Creech.

23 Q Did you observe him do that?

24 A Yes, sir.

25 Q And did you sign that as a witness to it?

1 A. Yes, sir, I did.

2 Q. And is there any other signature there?

3 A. Yes, sir, there's a signature of George Menzik.

4 Q. And did you watch Mr. Menzik -- did he sign the
5 same time you did?

6 A. Yes, sir, he signed it first and then I signed it.

7 Q. Yes. And each of -- would you describe the
8 manner in which you gave this Notification of Rights to
9 Mr. Creech then at that time?

10 A. This particular one here?

11 Q. Yes.

12 A. This particular one was given orally and, then,
13 the form given to him to read and he was advised if he
14 understood each of the rights to place his initials on the
15 space provided to the right; if he understood the form in
16 its entirety would you sign it at the bottom and putting in
17 the place the date and time.

18 Q. Was that all in Mr. Creech's handwriting?

19 A. Yes, sir.

20 Q. Did you read him that top part there, that long
21 paragraph?

22 A. I did not read this paragraph to him.

23 Q. Did you present it to him for his inspection and
24 reading?

25 A. Yes, sir.

1 Q About what time of day was this would you say?

2 A This was the one that was given to Mr. Creech in
3 Glenns Ferry and the time marked here is 4:17 a.m. So, that
4 would be the approximate time.

5 Q So, you actually did give him his rights in
6 Glenns Ferry?

7 A Yes, sir.

8 MR. REMAKLUS: All right, fine.

9 THE COURT: We will take our noon recess until
10 1:30.

11 MR. REMAKLUS: Yes, thank you, Your Honor.

12 MR. ROBINSON: Your Honor, may we ascertain whether or
13 not the courtroom will be locked so we can leave everything
14 where it is?

15 VOICE: Yes, we'll lock it.

16 (Noon recess taken.)
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